Improving Joint Obstacles Remain

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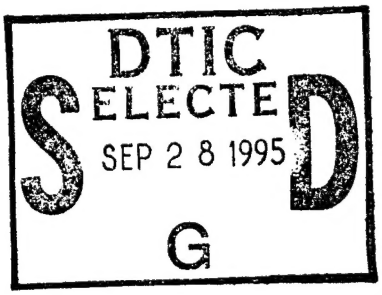


The Honorable Edward J. Markey
Chairman, Subcommittee on Telecommunications
and Finance
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we examine international regulatory efforts to improve cross-border information sharing in securities and futures markets. The report examines the need to share information, the strengths and weaknesses of different kinds of agreements, the types of information exchanged, and legal and regulatory obstacles to improving the exchange of information.

We are sending copies of this report to interested Members of Congress, appropriate committees, executive branch agencies, and foreign financial regulators. Copies will also be made available to others upon request.

Major contributors to this report are listed in appendix V. If there are any questions concerning the contents of this report, please call me at (202) 275-8678.

Sincerely yours,

Craig A. Simmons
Director, Financial Institutions
and Markets Issues

Executive Summary

Purpose

In a recent international stock swindle, investors in as many as 45 countries were alleged to have been defrauded of over $150 million. Regulators operating on their own in each of these countries may not have been able to fully investigate this far-reaching alleged swindle or identify its scope or perpetrators; these regulators needed to share information with their foreign counterparts. Information sharing is one of the best defenses U.S. and foreign regulators have against unscrupulous persons who spread their activities among many countries and make it difficult for any one regulator to investigate fraud or other abusive practices. However, international securities and futures markets still operate under national legal and regulatory structures that can inhibit information sharing.

Concerned about whether U.S. regulators and exchanges are able to provide adequate oversight of international market activity, the Chairman of the Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, requested that GAO determine (1) the types of information various nations' securities and futures regulators need to share in order to fulfill their market oversight responsibilities, (2) the extent to which information is currently shared, (3) the types and adequacy of arrangements used for sharing information, (4) whether and what kinds of impediments exist to sharing information and how these can be overcome, and (5) the effectiveness of existing international organizations in addressing issues related to international information sharing.

Background

As cross-border trading has increased exponentially in the past decade, so too have the opportunities for illegal or improper activities to be perpetrated by individuals operating outside the legal jurisdiction of the country whose markets are being abused. As a result, the information needed by regulators in the United States and other countries to detect and prevent fraud and other abuses in their markets often exists beyond their borders. Generally, regulators need information from their foreign counterparts to (1) enforce laws or regulations such as those proscribing fraud, insider trading, or market manipulation; (2) ensure that international securities and futures firms comply with financial and other operational requirements; and (3) assess the trading activity of market participants to help detect illegal activities.

In the past, regulators were forced to use unilateral or other methods, such as subpoenas, to obtain foreign-based information. However, these approaches were often time-consuming, expensive, and uncertain in their

outcome; moreover, they were considered by many countries to be an infringement on their national sovereignty. More recently, regulators have focused on developing cooperative relationships and negotiating information-sharing agreements with their foreign counterparts.

Results in Brief

U.S. regulators have made significant progress in recent years in improving their access to foreign-based information through both formal and informal approaches. They have negotiated new bilateral information-sharing agreements and improved existing agreements. They have also initiated changes in laws and regulations in the United States and encouraged similar changes overseas to improve information sharing. The progress they have made is attributable to both a greater emphasis by U.S. regulators on transnational information sharing and the efforts of regulators involved in organizations such as the International Organization of Securities Commissions, the Federation Internationale des Bourses de Valeurs, and the U.S.-based Intermarket Surveillance Group to promote a greater understanding within the worldwide community of the need for information sharing and cooperation.

Despite this progress, however, U.S. regulators are still unable to obtain all the information they need. Most of the remaining impediments to information sharing result from legal and regulatory structures in foreign countries that do not provide their regulatory officials the power to compel or share information and that U.S. regulators cannot control. However, information-sharing impediments also exist in the United States with respect to the statutory authority of the futures market regulator, the Commodity Futures Trading Commission (CFTC). The Commodity Exchange Act does not explicitly provide CFTC with the authority to (1) conduct investigations solely on behalf of a foreign regulator, (2) ensure more fully that confidential information received from foreign regulators is not disclosed to third parties in response to a Freedom of Information Act request, and (3) share confidential information with foreign exchanges or self-regulatory organizations. The securities market regulator, the Securities and Exchange Commission (SEC), obtained these powers in 1988. Legislative changes are needed to provide CFTC with these powers.

Principal Findings

Regulators Have Made Progress in Sharing Information

In the early 1980s, U.S. regulators made few requests for foreign-based information. They often had difficulty obtaining from foreign authorities information necessary to investigate possible violations of U.S. securities and futures laws. Since the mid-1980s, however, information sharing between U.S. and foreign securities and futures regulators has improved. U.S. federal and self-regulatory officials told us that they are sharing significant amounts of information on an informal basis through improved relations with their foreign counterparts. In addition, federal regulators have entered into 23 information-sharing agreements since January 1988. Furthermore, SEC and CFTC revised an existing agreement with U.K. regulatory officials to make it more comprehensive. U.S. exchanges have 40 information-sharing agreements with their foreign counterparts. (See pp. 17-28.)

SEC has recently requested and received changes to its legislative authority that allow it to compel information at the request of a foreign regulator even when no SEC rule violation is alleged, guarantee a broader range of confidential treatment of information, and make explicit its authority to pass nonpublic information directly to foreign self-regulatory organizations. Similarly, several foreign countries, such as France, Japan, and the United Kingdom, have strengthened their securities laws to allow their regulators to compel testimony and the production of documents for foreign regulators. CFTC has also requested these authorities but has not yet received them. (See pp. 33-35.)

International Organizations Are Working to Improve Information Sharing

Three international organizations have taken initiatives to improve information sharing among the regulators of various countries. The International Organization of Securities Commissions, with more than 60 countries represented, has created a group to work on information-sharing issues and has issued principles for information sharing. The Federation Internationale des Bourses de Valeurs, an association of securities exchanges, has encouraged its members to enter into cooperative information-sharing arrangements with their foreign counterparts. (See pp. 29-32.)

The Intermarket Surveillance Group, an organization comprising the heads of surveillance departments of securities and futures exchanges, has

continued to add foreign organizations to its original U.S.-only membership; the most recent of these additions are from Canada and the Netherlands. Member exchanges share surveillance information and coordinate investigations of suspicious trading activities. (See pp. 32.)

Despite Progress, Regulators Still Encounter Barriers to Information Sharing

Despite their progress, securities and futures regulators are still hindered in information sharing by existing legal and regulatory structures. For example, in some countries, blocking laws can prohibit the disclosure, copying, inspection, or removal of certain documents. In others, bank secrecy laws may prohibit the disclosure of information regarding the clients of a bank. Some countries lack a distinct regulator for securities and futures markets with which to exchange information or negotiate information-sharing agreements. In others, regulatory authorities may not have the power to share information with foreign authorities. (See pp. 38-44.)

Other problems also can hamper information sharing such as differing technical and resource capabilities of regulators, the inability to obtain information from countries with ongoing criminal proceedings, and laws that require violations to be criminal offenses in all the countries involved before information can be shared. Because many of these problems exist in foreign countries, U.S. regulators cannot solve them directly; however, U.S. regulators are encouraging other countries to make changes necessary to improve information sharing. (See pp. 45-47.)

Barriers to information sharing also exist in the United States. CFTC does not have as broad a legislative authority for sharing information as does SEC, nor does its statutory mandate explicitly provide CFTC the legal authority to conduct investigations solely on behalf of a foreign counterpart as does the mandate of SEC and as do many foreign regulators. In addition, CFTC—again unlike SEC—does not have as broad an exemption from disclosure under the requirements of the U.S. Freedom of Information Act. Consequently, some foreign regulatory officials have expressed concern that CFTC may be required to release information obtained from them, even if foreign laws prohibit the release of such information. Finally, CFTC generally cannot share confidential information with foreign self-regulatory organizations or exchanges. As a result of CFTC's lack of legal authority in these areas, it has been unable to make fully effective an enforcement information-sharing agreement with France and to fully share information with certain other foreign counterparts. (See pp. 47-48.)

Recommendations

GAO recommends that Congress provide CFTC with the legislative authority to (1) obtain information on behalf of a foreign regulator in order to answer that regulator's request without regard to whether the request raises a possible violation of U.S. law, (2) guarantee more fully the confidentiality of information provided to it by foreign regulatory authorities, and (3) pass nonpublic information directly to foreign self-regulatory organizations.

Agency Comments

SEC and CFTC officials provided written comments on a draft of this report (see apps. III and IV). SEC generally agrees with the report and believes that regulators must have the political will and the legal authority to cooperate. SEC said that regulators worldwide are committed to breaking down the remaining barriers to cooperation. CFTC generally agrees with the report and notes that it has been asking Congress for the legislative authority embodied in the GAO recommendation since January 1989. CFTC said that it is committed to working with Congress in completing CFTC's reauthorization bills so that this and other important regulatory issues can be resolved.

Contents

Abbreviations

CFTC	Commodity Futures Trading Commission
COB	Commission des Operations de Bourse
EC	European Community
FIBV	Federation Internationale des Bourses de Valeurs
FOIA	Freedom of Information Act
IOSCO	International Organization of Securities Commissions
ISG	Intermarket Surveillance Group
MOU	memorandum of understanding
SIB	Securities and Investments Board
SEC	Securities and Exchange Commission
SRO	self-regulatory organization

Introduction

International securities and futures trading has grown tremendously in recent years. Many different foreign-based investment products are now available on U.S. markets, and U.S. markets are accessible to citizens of other countries. This growth has increased the potential for abusive practices, such as fraud, insider trading, and market manipulation.[1] Today, these illegal or improper activities can be more readily perpetrated by individuals operating outside the territorial jurisdiction of the country whose markets are being abused. When such conduct originates outside U.S. boundaries, such abusive practices are more difficult to investigate and prosecute. As a result, regulatory authorities such as the U.S. Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and various self-regulatory organizations (SRO)[2] which are responsible for, among other things, protecting investors and ensuring efficient, fair, and orderly markets, must increasingly depend on information sharing with their foreign counterparts in order to fully investigate and prosecute abusive practices.

Internationalization of Securities and Futures Markets Has Increased the Need for Transnational Information Sharing

The internationalization of securities and futures markets[3] increases the challenges to U.S. and foreign regulators responsible for protecting investors and ensuring fair, efficient, and orderly markets.[4] Easier access to markets worldwide and greatly increased cross-border trading have increased the potential for illegal or improper activities. Fraud or other abuses in securities and futures markets may now be more easily hidden by individuals spreading their activities across several national jurisdictions. For example, in a recent alleged far-reaching and complex

[1]For discussions of illegal trading activities, see Securities Regulation: Efforts to Detect, Investigate, and Deter Insider Trading (GAO/GGD-88-116, Aug. 5, 1988) and A Study of Effects on the Economy of Trading in Futures and Options, Board of Governors of the Federal Reserve System, CFTC, and SEC (Washington, D.C.: Dec. 1984).

[2]SROs are required, under relevant statutory and regulatory provisions, to ensure compliance by their members with legal and ethical standards in the securities and futures industry. SEC and CFTC review the adequacy of SRO rules and oversee the effectiveness of SRO enforcement, market regulation, and other efforts. See Securities Regulation: Securities and Exchange Commission Oversight of Self-Regulation (GAO/GGD-86-83, Sept. 30, 1986). See appendix II for a list of SROs we contacted.

[3]See Treasury Bulletin, Department of the Treasury, Office of the Secretary (Washington, D.C.: 1992) for statistics on transnational securities trading. CFTC collects information on the location of the owner of reportable futures positions as well as foreign bank participation in U.S. futures markets. Data on international securities and futures trading are not comparable; thus, it is difficult to determine the relative growth of international securities and futures trading.

[4]In this report, the term "regulator" includes both national regulators, such as SEC and CFTC in the United States and the Commission des Operations de Bourse in France, and state or provincial regulators, such as the Ontario Securities Commission in Canada. We also use the term regulator to refer to self-regulatory organizations and exchanges, such as the National Association of Securities Dealers in the United States or the Toronto Stock Exchange in Canada, recognizing that many foreign exchanges are only beginning to obtain self-regulatory powers.

international stock swindle that may have defrauded investors in as many as 45 countries of over $150 million, securities regulators and legal authorities in numerous countries, including France, Switzerland, the United Kingdom, and the United States, worked cooperatively to investigate the case. Alone, any single national regulator may not have been able to fully investigate these abuses or identify the perpetrators.

For regulators to properly enforce laws and regulations in global securities and futures markets, they need to share information with their foreign counterparts. For example, to enforce laws and pursue investigations involving foreign investors or markets, regulators may need information and evidence from overseas. Specifically, SRO officials may need market surveillance information from their foreign counterparts to determine whether illegal activities are taking place. Licensing officials often require information from abroad to verify the financial statements and disciplinary history of foreign broker-dealers or futures commission merchants seeking to conduct financial operations in the United States. Further, regulators may need information from foreign sources to evaluate the financial soundness of foreign firms doing business in their jurisdiction. Finally, regulators may seek foreign-based information concerning the policies and regulations of foreign regulatory bodies and SROs in order to understand their supervisory authorities or market rules and operations.

The information needs of these securities and futures market regulators can accordingly be categorized into four areas: enforcement, compliance, surveillance, and technical and policy information.

Enforcement Information

Enforcement information is needed to protect investors and promote fair markets by, among other things, identifying and prosecuting the perpetrators of illicit practices.[5] A request for enforcement information can be initiated by a regulatory authority on the basis of its suspicion that an illegal activity has occurred, is occurring, or is about to occur. Such a request may seek access to trading records, securities or futures firm and bank account information, and credit card and telephone records located in a foreign jurisdiction. The testimony of persons located in the foreign jurisdiction may also be needed. Regulators use this information to help

[5]During fiscal years 1989, 1990, and 1991, SEC's Office of International Affairs reported making 101, 177, and 151 requests for information to foreign governments and receiving 150, 130, and 211 foreign requests for information, respectively. Although most of these requests were for enforcement-related information, some were for technical assistance. During fiscal years 1989, 1990, and 1991, CFTC's Division of Enforcement and Division of Trading and Markets reported making 27, 28, and 54 requests to foreign governments and receiving 47, 51, and 88 foreign requests, respectively. These requests concerned both enforcement and compliance issues.

them analyze the transactions related to suspicious activity, which may include documenting that certain individuals were involved in an illegal activity. In addition, an enforcement-related request may seek accounting records of foreign subsidiaries of corporations to ensure that proper disclosure has been made to the requesting country's investors.

Compliance Information

Compliance information is needed to ensure the financial and operational stability of market participants. A regulatory authority may request (1) compliance information when considering an application by a foreign individual or firm to conduct securities or futures business in the requesting authority's country,[6] (2) initial and periodic data regarding a firm's compliance with capital adequacy and other financial requirements, and (3) data regarding the financial health of parents or subsidiaries of the regulated entity and timely notification of any significant problem with these overseas affiliates.

U.S. regulators have exempted foreign firms from U.S. regulations based, in part, on the ability of U.S. regulators to access compliance information from foreign regulators and firms. For example, CFTC may allow foreign firms that solicit and accept orders from U.S. customers for foreign futures and securities transactions to follow the regulations of their home country. This exemption from U.S. regulations would depend on CFTC obtaining trading and financial information from foreign regulators, exchanges, and firms for customer protection purposes.

Surveillance Information

Surveillance information is needed to ensure the integrity of securities and futures markets and generally to enhance market supervision. Such information includes data about trading activity, in particular securities or futures instruments, and about the total position of firms participating in multiple international markets. This information can be used, for example, to help detect a market participant who is using nonpublic information or attempting to corner or squeeze the market for a particular product;[7] it can also be used to detect potential intermarket trading abuses, especially

[6]In the United States this is called "registration information" and includes data on the background of employees, business activities, and other information relating to the regulatory, disciplinary, or criminal history of the person. Such information could preclude a person or firm from participating in securities and futures markets.

[7]When a trader has secured such relative control of an instrument or a commodity's supply that its price can be manipulated, the trader is said to have cornered the market. A squeezed market is a form of manipulation in which the lack of supply tends to force those needing to cover their positions to do so at higher prices.

those involving the stock and options markets. Also, U.S. regulators may need information on participants in an initial distribution of securities and firms who purchase or induce others to purchase these securities.

Technical and Policy Information

Regulators request technical and policy information from one another in order to better understand a counterpart's laws or market rules and operations. Such requests may seek information on the securities or futures laws and regulations of a counterpart's country; explanations of the counterpart's regulatory powers and responsibilities; or information on how to develop, manage, and regulate securities or futures markets. For example, SEC's Office of Economic Analysis may need foreign information as part of monitoring overseas markets to assess their economic, regulatory, and institutional changes and to evaluate the impact of such changes on U.S. markets and SEC regulations. Also, SEC's efforts to accommodate cross-border securities offerings and trading require it to identify differences in disclosure requirements and accounting standards in other countries.

CFTC officials told us they share a significant amount of information concerning futures regulations or market operations with foreign counterparts. For example, CFTC officials held discussions with regulators in the United Kingdom, France, Japan, and Singapore concerning the possible impacts of the Persian Gulf War on oil futures and stock index futures and other financial instruments. On a routine basis, SEC and CFTC provide information about their experiences in regulating U.S. securities and futures markets to emerging markets and to developed markets that are exploring alternative methods to achieving a particular regulatory goal.

Securities and Futures Market Regulators Have Used Several Approaches to Obtain and Share Information

U.S. and foreign regulatory and exchange officials share information through several different methods. In some cases, officials share information informally with their foreign counterparts—that is, they simply request information through telephone conversations or letters when the information is needed. U.S. and foreign regulatory and exchange officials also share information through formal negotiated information-sharing agreements. Generally, this type of agreement states the intent of the parties to share information and establishes the methods that will be used to provide information and assistance. Such an agreement is often called a memorandum of understanding (MOU), but it is also referred to by other names, such as an administrative agreement or

communique, depending on the complexity and legal status.[8] Almost all of these agreements are bilateral—that is, between two countries. However, the United States is also a party to some multilateral agreements. (See tables I.1, I.2, and I.3 in app. I.)

Mutual legal assistance treaties dealing with criminal matters are another type of bilateral agreement for sharing information. Although these treaties are used for criminal matters, SEC and CFTC can use treaties to obtain information abroad as long as the information is needed for an investigation relating to the subject of a potential criminal action. These treaties are formal agreements that are negotiated between governments, rather than between regulatory or exchange officials, and are binding under international law. (See table I.4 in app. I.)

U.S. regulatory authorities may also use unilateral or other methods to obtain foreign-based information, including investigative subpoenas, letters of request,[9] or inquiries by diplomatic officers or commissioners. An investigative subpoena is an administrative document requiring someone to testify. SEC and CFTC officials have the unilateral power to subpoena witnesses from any place in the United States, and those witnesses may be required to produce evidence under their control that is located abroad. CFTC also has the power to subpoena witnesses located in foreign countries, although it has not exercised that power.

Once U.S. regulators file a legal action, they may obtain foreign-based evidence by requesting the U.S. court to issue a letter of request for assistance to a foreign court. They may also request that a consular official or private commissioner gather evidence abroad. However, each of these methods has drawbacks that may make it difficult for U.S. regulatory officials to obtain the foreign-based information. For example, many foreign governments consider subpoenas to be an infringement on a country's sovereignty. Also, a person served with a letter of request may refuse to provide the requested evidence.

Objectives, Scope, and Methodology

The Chairman of the Subcommittee on Telecommunications and Finance, House Committee on Energy and Commerce, requested that we investigate the current state of international information sharing between U.S.

[8]Throughout this report, we use the word "agreement" to cover all types of information-sharing arrangements—including those that are binding under international law and those that are statements of intent and are not legally binding.

[9]The legal term for letters of request is "letters rogatory." These letters may be issued by a U.S. court to request information from foreign countries, generally after a lawsuit has been filed.

securities and futures regulators, including self-regulators and their foreign counterparts. Specifically, the Chairman asked us to

- identify what information U.S. securities and futures regulators and exchanges need to share with foreign counterparts,
- determine the type and extent of information currently being shared,
- determine what types of information-sharing arrangements currently exist and what plans have been made to develop other arrangements,
- identify any existing impediments to information sharing and what actions could be taken to overcome these impediments, and
- assess the effectiveness of existing international institutions in addressing information-sharing issues as well as SEC's use of bilateral memoranda of understanding.[10]

To achieve these objectives we reviewed international organization, government, nongovernment, and SRO documents including correspondence, memoranda, testimony, articles, reports, books, regulations, and laws. Our review of government documents included an examination of a judgmental sample of SEC and CFTC international information-sharing case files from January 1989 through May 1991 to identify reasons why some U.S. and foreign information requests were unfulfilled. Time and resource constraints did not allow us to do a more comprehensive review of these files.

We did our work in 13 countries: Australia, Canada, France, Germany, Hong Kong, Japan, Luxembourg, the Netherlands, Singapore, Switzerland, the Republic of China (Taiwan), the United Kingdom, and the United States.[11] We included countries in our study if they met at least one of the following criteria: (1) an existing agreement with U.S. regulators, (2) frequent information sharing with U.S. regulators, (3) high levels of activity in U.S. securities markets, or (4) a tradition of bank secrecy. In each country we met with officials responsible for regulating securities and futures markets.[12] In Australia, Luxembourg, the Netherlands, Switzerland, the United Kingdom, and the United States, we also met with

[10]Problems With the SEC's Enforcement of U.S. Securities Laws in Cases Involving Suspicious Trades Originating From Abroad, Commerce, Consumer, and Monetary Affairs Subcommittee, Committee on Government Operations (Washington, D.C.: 1988).

[11]Hong Kong is a British crown colony and not a country. Thus, it does not have a national regulator but a central regulator.

[12]Individual states in the United States have also entered into information-sharing agreements with foreign regulators. For example, the securities regulators of 23 states have agreements with The Securities and Futures Authority in the United Kingdom. These agreements between state governments and foreign regulators are outside the scope of this report.

police and criminal authorities. In addition, we met with officials of the International Organization of Securities Commissions (IOSCO), the Federation Internationale des Bourses de Valeurs (FIBV), and the Intermarket Surveillance Group (ISG), as well as with officials of the U.S. Mission to the European Community and the Commission of the European Communities. A complete listing of organizations contacted is contained in appendix II.

We spoke to officials about (1) the development and evolution of information sharing in securities and futures markets over the past 20 years; (2) legal and regulatory reasons for requesting certain types of information; (3) the formal as well as informal nature of information sharing; (4) the advantages and disadvantages of unilateral, bilateral, and multilateral approaches to information sharing; (5) individual, organizational, regulatory, and legal factors leading to the success or failure of individual requests for information; (6) the role played by administration of justice, international, and regional organizations; and (7) implications for the United States of the current state of affairs in information sharing.

We obtained informal comments on a draft of this report from regulators in the 13 countries included in its scope. We obtained formal comments on a draft of this report from SEC and CFTC (see apps. III and IV, respectively). We also obtained technical comments from SEC and CFTC, which we have incorporated in the report. We did our review from February 1991 to February 1992 in accordance with generally accepted government auditing standards.

Regulators and Exchanges Have Made Progress in Sharing Information

In the early 1980s, U.S. regulators made few requests for foreign-based information. They often had difficulty obtaining from foreign authorities information necessary to investigate possible violations of U.S. securities and futures laws. Since the mid-1980s, however, information sharing between U.S. and foreign securities and futures regulators has improved. This improvement is due, in part, to U.S. regulators' increased emphasis on establishing cooperative relationships with their foreign counterparts and developing bilateral information-sharing agreements.

Information Sharing Had Been Limited

U.S. regulators made few requests for foreign-based information before the mid-1980s and had limited contact with their counterparts in foreign countries. The outcomes of the requests that were made often proved unsatisfactory. When U.S. regulators found themselves increasingly in need of foreign-based information because of the increasing volume of international securities and futures trading, they had difficulty obtaining this information in a timely manner and sometimes were not able to obtain information at all. Foreign blocking and secrecy laws hindered them, and unilateral and other efforts to obtain information from foreign persons were often adversarial, time-consuming, and expensive. Moreover, foreign governments sometimes considered unilateral efforts to be an infringement on their national sovereignty. In addition, U.S. authorities could not depend on the outcomes of their efforts because each case was determined in court separately. Because of these difficulties, U.S. regulators explored alternative approaches to obtaining foreign-based information.

Foreign Blocking and Bank Secrecy Laws Hindered Voluntary Information Sharing

Foreign blocking laws generally prohibit the disclosure, copying, inspection, or removal of certain information located in the home country. These laws often prohibit even voluntary disclosure of information to foreign governments for use in legal or other official proceedings. Blocking laws most often protect certain types of information related to international commerce or trade, national security, and economic matters. In some countries, blocking laws apply to documents that relate to certain industries such as nuclear or national defense industries. In other countries, they apply to all types of commercial information. Although the scope of blocking laws varies among countries, the intent of these laws is the same: to protect the national interests of the home country by prohibiting foreigners from obtaining certain types of information.

Blocking laws are not intended to shelter criminal activity. However, in fulfilling national goals, these laws may constrain information sharing. For example, France's blocking law prohibits French citizens and organizations from communicating economic, commercial, industrial, financial, or technical information to foreign authorities if such information affects French sovereignty, national security, essential economic interests, or public order, unless the information is covered by international treaties or agreements. The law also bans the sharing of such information with foreign authorities for foreign judicial or administrative proceedings. However, the Commission des Operations de Bourse (COB) and the Banking Commission are exempt from the French blocking law.

Bank secrecy laws are designed to protect customer interests.[1] They prohibit the disclosure of any information regarding a customer's identity or banking activities, unless the customer waives the right to secrecy or a particular country's procedures allow the release of such information.[2] However, in doing so, these laws may provide a safe haven from which citizens of the United States and foreign countries can engage in illegal trading in U.S. markets. For example, if an individual opens an account at a bank in a country with bank secrecy laws, the customer can direct the bank to execute an order through a U.S. broker-dealer. Under such circumstances, U.S. officials initially may only be able to identify the institution placing the order, not the identity of the individual. That information is available from the foreign bank, and the bank secrecy laws of the foreign country can prevent, or at least delay, U.S. officials from obtaining the individual's identity.[3]

[1]U.S. law also protects individuals from government intrusion into their financial records. The Right to Financial Privacy Act (P.L. 95-630) strictly limits conditions under which a government authority may obtain from a financial institution any information in a customer's financial records. For instance, a government authority may obtain financial records under a court order or following an administrative subpoena issued in connection with a legitimate law enforcement inquiry. The government authority must certify to the institution that it has notified the customer and given the customer the opportunity to challenge the subpoena. Conditions under which government officials may overcome financial privacy laws vary from country to country.

[2]Under bank secrecy laws, clients may waive their rights to secrecy because the laws are designed to protect the rights of the individual. However, as discussed, blocking laws protect national interests and therefore cannot generally be waived by an individual or entity.

[3]An individual may also execute purchases and sales through a number of different financial intermediaries, such as shell corporations, as well as foreign banks in several different jurisdictions. This practice makes it even more difficult and time-consuming for regulators to identify potential illegal activity. Different jurisdictions may have different laws governing the extent to which a financial intermediary must establish the true identity of clients.

SEC and CFTC Have Used a Variety of Methods to Attempt to Obtain Foreign Information

Because blocking and bank secrecy laws often hindered SEC and CFTC requests for voluntary cooperation from foreign institutions, U.S. regulators instead tried unilaterally to compel or otherwise obtain the production of foreign-based evidence through U.S. federal courts. Certain attempts were successful but were often adversarial, time-consuming, and expensive. In some cases, the unilateral attempts also strained international relations. Because the regulators' requests were decided on a case-by-case basis, the results were generally unreliable.

The principal unilateral methods used to gather information from abroad include investigative subpoenas or discovery processes for the prosecution of a lawsuit. The investigative subpoena is one of the most basic tools available for gathering evidence. When SEC and CFTC officials investigate potential violations of the securities and futures laws, they have the power to subpoena witnesses "from any place in the United States." This practice has been construed by U.S. courts as giving SEC and CFTC the ability to issue a subpoena to obtain evidence controlled from the United States, but located any place in the world, as long as the subpoena is properly served in the United States.[4] SEC and CFTC officials thus could attempt to enforce compliance with a subpoena calling for the information to be provided outside the United States. In practice, many foreign governments often consider these efforts to be an infringement on their country's sovereignty.

Once U.S. regulators have filed a lawsuit, they may, in some cases, obtain a court order to compel the production of records and documents located abroad. A court may enforce its order under Rule 37 of the Federal Rules of Civil Procedure, which authorizes the court to impose a wide range of sanctions for failure to comply with a discovery motion.[5] Discovery motions made under this rule, however, are litigated on a case-by-case basis and can be time-consuming. The efforts of regulators to obtain evidence using this rule have been only partially successful. Also, U.S. regulators most often need information for investigative purposes, whereas this rule is only applicable after regulators have filed a lawsuit.

[4]U.S. administrative agencies, which include SEC and CFTC, do not have the power to compel persons outside the United States who do not have contact with the United States to produce evidence for an investigation, unless an exception is provided by statute. CFTC has such an exception in connection with fraud and market manipulation cases. However, CFTC has not exercised this power.

[5]A discovery motion is an application to a court to obtain an order directing the disclosure of facts or documents.

U.S. regulators also can use the Hague Convention[6] to obtain foreign-based evidence from third parties once they have filed a lawsuit.[7] The Hague Convention, which has been signed by many countries since being opened for signature in 1970, creates procedures for obtaining evidence located in foreign countries related to civil or commercial matters. The Hague Convention does not apply to criminal proceedings. Under the Hague Convention, regulators may try to obtain foreign-based evidence through evidence gathering by a U.S. consular official or private commissioner or through letters of request issued by a judicial authority. When the officials or commissioners gather evidence abroad following the Hague Convention, they must first obtain permission from the foreign country's authorities to gather evidence and follow evidence-gathering procedures consistent with that foreign country's law. Under the Hague Convention, U.S. regulators may also request that a U.S. court issue a letter to a foreign judicial authority requesting information.[8] However, the information that can be obtained by making a request under the Hague Convention may be limited. For example, a person who is served with a letter of request may refuse to provide the requested evidence if that person has a privilege or duty to refuse under the laws of the foreign country. This refusal may cause denials of requests or extensive delays in obtaining information.

During the early to mid-1980s, U.S. regulators had mixed success when requesting information from foreign authorities using the procedures set out in the Hague Convention. For example, in June 1983, when SEC officials were investigating an insider trading case, they used the procedures of the Hague Convention to request testimony from a witness located in France.[9] The French Ministry of Justice granted SEC's request in August 1983. However, the witness was able to delay testifying by (1) not appearing at the hearing scheduled in January 1984, (2) filing a brief protesting the evidence-gathering procedure in March 1984, and (3) filing a request in January 1985 for an administrative court to review the Ministry

[6]The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (23 U.S.T. 2555, T.A.I.S. No. 7444). Letters of request can also be made outside the Hague Convention.

[7]U.S. circuit courts are split on whether U.S. law allows U.S. courts to act on a request from a foreign court for information relevant to an investigation even though no judicial proceeding is pending. Some U.S. courts allow the use of the Hague Convention to request information in connection with an investigation even if there is not a pending judicial proceeding. However, most nations refuse to provide information requested under the Hague Convention if the authorities requesting the information have not filed a lawsuit.

[8]See Federal Rule of Civil Procedure 28(b)(3), which specifies that depositions for U.S. federal courts may be taken in a foreign country in response to a letter rogatory.

[9]Michael D. Mann and Joseph G. Mari, "Developments in International Securities Law Enforcement and Regulation," paper delivered at a securities regulation seminar, Los Angeles, October 24, 1990.

of Justice's earlier decision. In December 1985, the administrative court confirmed SEC's right to obtain the evidence, but by that time, SEC was very close to settling the case, and the witness in France never testified.

Even when U.S. regulators obtain the information they need, the process for obtaining the information under the Hague Convention may take a substantial amount of time and resources. For example, in the same case described earlier, SEC officials requested information from witnesses located in the United Kingdom. However, the witnesses argued that if they testified, they would violate the Luxembourg bank secrecy laws because at the time the suspicious trading took place, they were employees of a London-based Luxembourg bank. After 9 months, the British court ruled in favor of SEC's request, and SEC officials finally obtained the information they requested.

Because of the problems associated with trying to force foreign entities or individuals to provide information, U.S. regulatory authorities began a dialogue with their foreign counterparts to try to improve information sharing. Since the mid-1980s, U.S. regulators have focused on developing cooperative relationships with their foreign counterparts.

Cooperative Arrangements Have Improved Information Sharing

Since the mid-1980s, U.S. regulators have focused their efforts on establishing cooperative relationships with foreign authorities. This focus on international cooperation has helped to improve the ability of U.S. regulatory officials to obtain foreign-based information, both informally and through formal information-sharing agreements negotiated between U.S. and foreign officials. Although U.S. and foreign regulatory officials frequently share information informally, they have also negotiated 79 formal information-sharing agreements since January 1986. (See tables I.1, I.2, and I.3 in app. I.) Some of these agreements establish procedures for sharing sensitive information that cannot be shared informally. Whether handled informally or formally, however, U.S. regulators told us that successful information sharing can be enhanced by a good working relationship and a sense of trust between regulatory counterparts.

Officials Often Share Information Informally

U.S. regulatory officials informally share substantial amounts of information with their foreign counterparts, even when a formal information-sharing agreement exists between regulators. For example, U.S. regulators often rely on informal channels of communication to obtain foreign-based information that is not considered confidential. In

addition, they may, in some cases, be able to obtain confidential information informally, especially when the information is needed for background purposes only. U.S. officials also may informally provide their foreign counterparts with U.S.-based information even in the absence of a formal information-sharing agreement.

According to both U.S. and foreign officials, successful informal information sharing depends on well-developed working relationships between regulatory counterparts. Where good working relationships exist, informal telephone contacts or letters between regulatory counterparts can be sufficient to exchange needed information quickly. However, as discussed earlier, the laws of a country may impede sharing information informally. In these cases, a more formal information-sharing method is needed.

Formal Agreements Facilitate Information Sharing

While formal information-sharing agreements between regulatory officials generally only confirm an intent to cooperate, these agreements can help facilitate the information-sharing process, particularly when officials need nonpublic foreign-based information. Both U.S. and foreign officials told us that formal agreements provide a predictable method for sharing confidential information. Generally, these agreements contain specific provisions as to when requests for confidential information can be made and how the information may be used. Moreover, formal agreements help to eliminate continuity problems due to staff changes because, where formal agreements exist, cooperative relationships between regulatory authorities are not as dependent on the rapport between individual regulatory officials.

U.S. and foreign regulators said that they are concerned about preserving the confidentiality of any nonpublic information they share with their foreign counterparts. Therefore, they often include provisions in formal information-sharing agreements regarding the possible uses of the information shared and the extent to which it must be kept confidential. For example, most of SEC's information-sharing agreements contain provisions that limit the use of information shared with foreign authorities investigating and prosecuting suspected violations of the requestors' securities laws. SEC may require that foreign regulators notify it if the shared information is to be used in a manner other than that specified in the information-sharing agreement. Some exchange agreements also provide conditions for the uses to which the information can be put—such as, that the information only be used for regulatory purposes. These

conditions help satisfy the concerns of both U.S. and foreign officials about preserving the confidentiality of information shared with another regulatory authority.

Because information-sharing agreements often contain confidentiality conditions and restrictions on the use of information obtained from foreign officials, they also can help overcome the bank secrecy and blocking laws of foreign countries. Some foreign officials told us that to do so, agreements must specify the uses and confidentiality requirements of information shared. For example, in France, COB is exempt from France's blocking laws after receiving assurances from foreign regulators that the confidentiality of the information will be protected. When COB provides information under the information-sharing agreement with SEC, these assurances are given.[10]

Information-sharing agreements may also limit the liability of the parties sharing information. Some foreign regulatory officials said formal agreements can justify the sharing of confidential information and protect the organization from complaints by affected parties within its country. For example, an official of the Taiwan Securities and Exchange Commission said that an information-sharing agreement would reduce the vulnerability of his agency to domestic objections when sharing nonpublic information.

Formal Agreements Are Being Used More Frequently

The focus of U.S. regulatory officials on developing international cooperation also has led to the development of formal bilateral information-sharing agreements with their foreign counterparts. Most of these agreements are signed statements of mutual intent to provide information and assistance needed to enhance supervision or enforce the respective securities and futures laws and associated regulations of each signatory. Although these agreements generally do not establish legally binding obligations between regulatory counterparts, the agreements do, in most cases,

- document the intent of each party to cooperate in sharing information,
- describe procedures by which nonpublic information will be shared and protected, and
- describe the uses to which certain types of information may be put.

[10]Although the public regulators in France can obtain an exemption from blocking laws in certain situations, officials at French securities and futures SROs cannot.

These bilateral information-sharing agreements are usually called MOUs. Regulatory officials also refer to other information-sharing agreements by names such as administrative agreements or communiques. Information-sharing agreements take different forms in order to maximize cooperation depending on what is necessary under the laws of the respective signatory country. Although MOUs are statements of intent, administrative agreements are generally binding under international law.[11] Communiques are less comprehensive than MOUs or administrative agreements and are generally viewed as interim agreements until an MOU or administrative agreement can be negotiated.

In the past 5 years, U.S. regulatory officials have negotiated various new information-sharing agreements. Since January 1988, SEC has negotiated 10 MOUs or administrative agreements and 7 communiques or other similar agreements. To date, SEC has MOUs or administrative agreements with the securities authorities of Argentina, Brazil, Canada (provinces of Ontario, Quebec, and British Columbia), France, Japan, Luxembourg, Mexico, the Netherlands, Norway, and the United Kingdom.[12] SEC also has communiques or other similar agreements with the authorities of Costa Rica, France, Hungary, Indonesia, Italy, and Sweden.[13] Since September 1988, CFTC has negotiated six MOUs or administrative agreements. These agreements are with Brazil, Canada (provinces of Ontario and Quebec), France, and the United Kingdom.[14] Since March 1984, CFTC has received assurances from federal and state regulators in Australia, Canada, Singapore, and the United Kingdom to exchange information on compliance programs. U.S. SROs have about 40 MOUs and other information-sharing agreements with their foreign counterparts.

Most of the information-sharing agreements countries have negotiated are bilateral, rather than multilateral. U.S. and foreign regulators told us that negotiating multilateral information-sharing agreements is not yet feasible because the securities and futures laws and regulations and the legal systems between countries currently differ too much to make it possible

[11]Officials of the French COB told us that although the administrative agreements signed by COB impose a stringent moral obligation on signatories, they cannot be considered as binding under international law.

[12]The agreement with the Netherlands is to be effective in July 1992.

[13]Some countries have more than one agreement with the United States. See appendix I.

[14]The administrative agreement with France will not be effective until certain provisions currently in CFTC's reauthorization legislation are passed. The regulatory provisions of the Mutual Recognition MOU cannot be fully implemented until CFTC's reauthorization legislation passes.

to achieve substantive multilateral agreements. However, information-sharing agreements between various countries have become more similar over time.

Agreements Cover Enforcement, Compliance, and Other Concerns

The initial focus of information sharing was on enforcement matters. Agreements were negotiated based on the experience of regulators attempting to get information to pursue insider trading cases. The best example of an enforcement agreement is the 1982 MOU between the United States and Switzerland that provided SEC access to Swiss bank trading records. Similarly, the 1986 MOUs signed with the U.K.'s Department of Trade and Industry and Japan's Ministry of Finance were targeted toward enforcement issues.

In recent years international agreements have been developed to cover additional market regulation and oversight purposes. For example, in order to prevent firms that operate in two countries with similar regulatory systems from having to meet the regulatory requirements of both countries, recent agreements permit the home country to oversee compliance with financial integrity rules. In agreements of this type, the foreign regulatory organizations agree, among other things, to provide appropriate financial information to U.S. regulators on an as-needed basis.

For example, SEC, CFTC, and some U.S. SROs are parties to financial information-sharing MOUs with the Securities and Investments Board (SIB) and SROs in the United Kingdom. These agreements allow for the waiver of U.K. capital adequacy requirements for U.S. securities and futures firms doing business from branches in the United Kingdom. Under the financial information-sharing MOU, U.S. regulators will supply certain information to their U.K. counterparts concerning the financial condition of U.S. firms on a periodic basis or upon request. CFTC has similar agreements with France and Canada by which CFTC waives its capital rules for certain firms headquartered in those jurisdictions but doing business in the United States.

Another example of an international information-sharing arrangement is when SEC grants exemptions for foreign securities firms from its Regulation 10b-6. This is an antimanipulation rule that prohibits persons who are engaging in a distribution of securities from bidding for or purchasing—or inducing others to bid for or purchase—the securities, until they have completed their participation in the distribution. The purpose of the restriction is to prevent an underwriter from artificially

influencing the market price of securities in distribution. SEC has granted an exemption from Regulation 10b-6 to certain members of the London Stock Exchange to allow them to buy and sell securities. As a condition of the exemption, the firms must follow certain procedures to prevent their transactions from influencing market prices and agree to provide information to SEC on an as-needed basis. SEC has granted similar exemptions to firms based in other countries for the distribution of particular classes of securities.

CFTC Regulation 30 permits firms located outside the United States that solicit and accept orders from U.S. customers for foreign futures and options transactions to seek an exemption from CFTC rules. This exemption is granted if CFTC judges that the firms are subject to a generally comparable regulatory scheme in the jurisdiction in which they are located and if the firms agree to disclose registration, trading, and financial information to CFTC on an as-needed basis. Firms in Australia, Canada, France, Singapore, and the United Kingdom have petitioned for and received such exemptions. CFTC's MOU with the French COB is unique in that compliance and surveillance information sharing provide the basis for each jurisdiction to recognize the other jurisdiction's products. This recognition allows the products to be offered to each country's citizens and the firms of each country's jurisdictions to avoid duplicate registration requirements. The agreement also addresses information sharing necessary for monitoring cross-border screen-based trading systems.

SEC officials also have distinctly different agreements with regulatory and exchange officials in emerging markets, such as Hungary, Indonesia, and Mexico. Among other things, these agreements provide for technical support and advice to assist in the development, administration, and operation of securities markets in these countries.

Agreements Between SROs Concern Sharing Market Surveillance Information

Officials of U.S. and foreign SROs have negotiated and implemented formal agreements for sharing market surveillance information. These agreements are used by both U.S. and foreign SRO officials to share trading information that will assist them in detecting and preventing fraudulent or abusive practices. These agreements confirm the responsibilities of each party to share trading information from electronic linkages between exchanges or related financial instruments. The agreements cover derivative products, such as index options and warrants, and the sharing of trading information between markets for derivative instruments and

their underlying securities.[15] Some of these agreements apply to specific products; others apply to all exchange products. Table I.3 in appendix I compares SRO agreements.

SEC and CFTC encourage SROs to enter into information-sharing agreements. SEC, in fulfilling its functions under the Securities Exchange Act, reviews and comments on the surveillance agreements negotiated by SROs with regard to derivatives.[16] SEC requires that formal information-sharing agreements be in place between relevant SROs to ensure that products are consistent with fair and orderly markets and are in the public interest. For example, SEC officials told us that there must be an information-sharing agreement between SROs before SEC approves a new derivative product for trading. CFTC has obligations under the Commodity Exchange Act to ensure that, among other things, contracts are not readily susceptible to manipulation or contrary to the public interest. Accordingly, as appropriate, CFTC ensures that information-sharing arrangements are in place between SROs.[17]

Regulators Have Improved Information-Sharing Agreements

Over the past few years, regulators have not only focused on negotiating new information-sharing agreements but have tried to provide additional assistance under existing or revised agreements. Generally, the more recent agreements are more comprehensive than earlier ones. For example, SEC signed a comprehensive MOU in January 1988 with securities regulators in the Canadian provinces of Ontario, Quebec, and British Columbia. The MOU contains specific provisions for cooperation not found in SEC's earlier agreements with other countries. Because it is so comprehensive, SEC officials consider the SEC-Canadian MOU to be a "model agreement" that can be used as a frame of reference when negotiating other MOUs. This MOU defines when assistance will be provided, such as in investigations or cases related to (1) insider trading, (2) fraudulent practices in connection with the purchase or sale of securities, (3) disclosure, or (4) the qualifications of those engaged in the securities business. This MOU also identifies the types of assistance that will be provided, such as accessing information in official agency files, taking the testimony of persons, and obtaining documents from persons.

[15]Index warrants are direct obligations of an issuer subject to cash settlement during the warrant's term based on the price of a specified stock index. The holder of an index warrant receives payment in U.S. dollars to the extent that the index has increased above or declined below a prestated cash settlement value.

[16]See section 19(b) of the Securities Exchange Act of 1934.

[17]See sections 2(a) and 5 of the Commodity Exchange Act.

A key feature of the SEC-Canadian MOU is the provision that each party will use its subpoena power, if necessary, to obtain information on behalf of the other. However, at the time this MOU was signed, neither SEC nor Ontario or British Columbia regulatory officials had the legal authority to conduct investigations on behalf of foreign regulatory officials if there was no suspected violation of their own country's laws. Therefore, SEC and these provincial authorities exchanged letters at the time they signed the MOU in which they each agreed to seek such legislative authority. SEC received this authority in November 1988 when the International Trading and Securities Fraud Enforcement Act became law. British Columbia regulatory officials also received this authority in 1988. SEC officials told us that although regulators in Ontario interpret their authority as providing this power, the Ontario Securities Commission is seeking legislation that would clarify and amplify its ability to conduct an investigation on behalf of a foreign regulatory authority.

As another example of improvements to the MOU process, SEC and CFTC recently signed a new, more comprehensive MOU with the U.K. Department of Trade and Industry and SIB that supplants an earlier MOU signed in September 1986. The new MOU, signed in September 1991, expands the information-sharing possibilities between U.S. and U.K. regulators. For example, it provides a framework for each regulator to use the powers available to it to compel the production of information in response to a request from the overseas counterpart subject to its own country's laws and national policy.[18] This MOU establishes a means for the parties to provide assistance even where the subject matter of the request does not constitute a violation of the laws, regulations, or requirements of the requested authority. The new MOU allows for information obtained under it to be used for certain agreed-upon purposes without prior consent. SEC officials said that this new MOU, like the Canadian MOU, covers information gathering and sharing for almost every purpose relevant to SEC.

[18]As of June 1992, CFTC did not have the power to compel the production of information for a foreign counterpart.

International Organizations Are Working to Improve Information Sharing

In addition to U.S. bilateral information-sharing efforts, international organizations, such as IOSCO, FIBV, and ISG, have helped to improve cross-border information sharing. These organizations serve as forums in which regulators can discuss their information-sharing needs and their sometimes disparate legal and regulatory systems. International organizations also help promote information-sharing activities by proposing guidelines on various regulatory issues. U.S. regulators have assumed lead roles in these organizations, and SEC, in particular, has worked through these organizations and directly with its foreign counterparts to promote MOUs and statutory changes to help improve information sharing.

IOSCO Has Established an Information-Sharing Working Group

IOSCO, established in 1975, addresses regulatory issues raised by the internationalization of the world's securities markets and facilitates efforts to coordinate international securities regulation. IOSCO's members are regulators representing the securities and futures markets of about 60 countries. Associate members include CFTC and the North American Securities Administrators Association. IOSCO also has affiliate members that are representatives primarily from exchanges. Nonmembers, such as securities firms, may only participate in IOSCO's annual meeting. In 1986, IOSCO adopted a resolution, proposed by SEC, calling for its member organizations to provide reciprocal assistance in obtaining information on market oversight and the prevention of fraud. In 1989, IOSCO adopted another resolution calling for its members to (1) consider negotiating information-sharing agreements that will allow them to provide information to foreign regulators, (2) provide information to foreign regulators even if the matter under investigation does not violate their own country's laws, and (3) seek legislative changes needed to negotiate agreements and obtain information for foreign authorities.

IOSCO's annual meetings, consisting of workshops and panel discussions, enable members to explore regulatory issues concerning securities markets and promote the development of cooperative relationships. According to U.S. and foreign regulatory officials, attending such meetings helps regulators to identify features of their own country's legal or regulatory system that could impede international information sharing.[1] These regulators can then seek changes to domestic laws or regulations that will improve their information-sharing capabilities.

[1]See Regulation of Derivative Markets, Products and Financial Intermediaries and Compliance Information Collection and Data Reporting Compendium and Chart, Working Party No. 7, Technical Committee, IOSCO (Montreal: May 1990).

IOSCO has established a Technical Committee, comprised of representatives of the largest markets, that examines significant regulatory issues affecting countries with developed securities markets. One of the committee's working parties has centered its efforts on studying issues related to information sharing between federal or central regulatory authorities. This working party recently issued two reports concerning information-sharing MOUs. One of the reports, based largely on the experience of U.S. regulators, identified the problems associated with the development and implementation of such MOUs.[2] It examined the identification of a counterpart, the scope of agreements, the uses of information and confidentiality, operational concerns, overlapping jurisdiction and double jeopardy, the impact of MOUs on other methods of obtaining information, denial of assistance, and consultation and settlement of disputes. The other working party report identified 10 principles that securities regulators should consider when developing bilateral information-sharing MOUs with foreign counterparts.[3] These principles are designed to provide a blueprint for negotiating and implementing MOUs. IOSCO recommends that MOUs cover as broad a range of matters as possible, including the treatment of subject matter, confidentiality, procedures for making and executing requests, legal rights and privileges of persons in the country receiving the request, unexpected problems, rights to refuse requests, types of assistance available, uses of information, execution of requests by requesting authorities, and cost sharing.

Some foreign regulators, particularly those in Pacific Rim countries, told us that IOSCO's policies and activities on information sharing have been instrumental in their obtaining greater authority to share information with foreign regulators. For example, officials of the Hong Kong Securities and Futures Commission said that IOSCO's work provided them with leverage in garnering legislative support when they sought the authority to share information with foreign authorities. Similarly, Japanese Ministry of Finance officials said that IOSCO's 1989 resolution calling for cooperation among national regulators provided the impetus for the Ministry to obtain the legal authority to conduct investigations on behalf of foreign organizations.

[2]See Report Addressing the Difficulties Encountered While Negotiating and Implementing Memoranda of Understanding, Working Party No. 4, Technical Committee, IOSCO (Montreal: Nov. 1990).

[3]See Principles for Memoranda of Understanding, Working Party No. 4, Technical Committee, IOSCO (Montreal: Sept. 1991).

FIBV Is Working to Improve Cooperation Among Exchanges

FIBV facilitates the exchange of information among its membership, which is composed of about 30 individual securities exchanges and associations of exchanges from around the world. FIBV's goal is to promote closer collaboration among securities exchanges and associations of securities exchanges in the interest of issuers and investors in securities and to cooperate with national and international organizations. It also seeks to promote the development of larger and more liquid capital markets and promote maximum levels of self-regulation of activities in both national and international arenas.

FIBV supports the negotiation of bilateral information-sharing agreements between exchanges and has undertaken efforts to encourage regulators to harmonize securities regulations that affect international information sharing. For example, in 1989, FIBV adopted a resolution calling for exchanges to notify each other when contemplating any major market actions, such as suspending trading. In addition, Japanese and Hong Kong stock exchange officials told us that FIBV pronouncements regarding the sharing of confidential information and other data between markets had encouraged their respective exchanges to change their rules accordingly. For example, officials of the Stock Exchange of Hong Kong credited FIBV with providing their exchange with the impetus to make its rules regarding the sharing of confidential information with foreign exchanges less restrictive.

In April 1991, FIBV created a task force to identify and analyze existing bilateral information-sharing arrangements among FIBV members. The task force did a study whose purpose was to catalogue existing agreements, identify agreement coverage, and focus on problems that frequently arise in exchanging surveillance information. The study sought to encourage regulators to expand the flow of surveillance information among exchanges and arrive at a standardization of privately negotiated agreements. Study results indicate that most FIBV member exchanges have significant market surveillance and investigative capabilities and are able to produce comprehensive reconstructions of trading in their markets. A substantial majority of FIBV member exchanges may share pre- and posttrade information with respect to the time, size, and price of quotes, trades, and the identity of the executing firms, with SROs outside their home countries. A majority of FIBV members are subject to legal restrictions on their ability to identify the owners of particular trades to self-regulators outside their home jurisdictions. Due to the encouragement

of SEC and CFTC, U.S. exchanges had a high degree of participation in information-sharing agreements.[4]

The U.S.-Based ISG Also Promotes International Cooperation

ISG is made up of the heads of market surveillance divisions of U.S. and some foreign SROs overseeing individual stock, options, and futures exchanges. Its members respond to each other's requests for surveillance information. ISG members also share audit trail data and data on large options positions on a routine basis. ISG started in 1981 as an organization made up of only U.S. members; in 1990, it began to include foreign affiliate members. Currently, the eight U.S. stock and options exchanges and the National Association of Securities Dealers are full members of ISG, and four U.S. futures exchanges and six foreign exchanges are affiliate members.[5] ISG meets on a regular basis.

ISG has attempted to enhance the sharing of surveillance-type information among the various stock and options markets and to coordinate investigations of suspicious trading activities that involve several such markets. One of ISG's current main objectives is to increase its foreign membership. However, in order to become an affiliate member, foreign exchanges must have surveillance capabilities similar to those of U.S. exchanges and be able to overcome legal impediments to information sharing. In one case, an exchange applying for affiliate membership was asked by ISG to have blocking statutes rescinded by its national legislative body as a condition of membership. Another current initiative is to develop model surveillance-sharing agreements for use by self-regulators. Representatives of CFTC and SEC participate in all major ISG meetings. Representatives of IOSCO and FIBV have also attended meetings.

[4]Keith Boast, Gordon Nash, and Bill Floyd-Jones, "Survey of Information-Sharing Agreements Among FIBV Exchanges," paper delivered at a seminar, Stockholm, March 1992.

[5]The U.S. members of ISG include the American Stock Exchange, Boston Stock Exchange, Midwest Stock Exchange, New York Stock Exchange, National Association of Securities Dealers, Pacific Stock Exchange, Chicago Board Options Exchange, Cincinnati Stock Exchange, and Philadelphia Stock Exchange. Currently, the foreign affiliate exchanges include the Montreal Exchange, Alberta Stock Exchange, Vancouver Stock Exchange, Toronto Stock Exchange, Securities and Futures Authority of the United Kingdom, and Amsterdam Stock Exchange. U.S. affiliates are the Chicago Mercantile Exchange, Chicago Board of Trade, Kansas City Board of Trade, and New York Futures Exchange. Affiliate members of ISG have full voting rights on intermarket issues that affect them directly but cannot vote on issues affecting only U.S. securities markets.

Officials From Major Markets Actively Participate in These Organizations

Regulatory and exchange officials from many of the world's securities and futures markets actively participate in these international organizations in order to improve regulatory cooperation. Most exchanges from the countries we visited were represented in FIBV; all of these countries were represented by their respective regulatory organizations in IOSCO. In addition, regulators from 8 of the 12 countries in our study were directly involved in the IOSCO working party that developed the 10 principles for consideration in negotiating information-sharing MOUs.

U.S. regulators told us that they have assumed lead roles in these international organizations in the belief that such organizations and associated activities can enhance the level of cooperation among securities and futures regulators. SEC has been particularly active in promoting information sharing through IOSCO. SEC will be the chair of IOSCO's Technical Committee until October 1992, and the New York Stock Exchange will be the chair of FIBV until December 1992. According to an FIBV official, the control of the chairs by U.S. regulators creates an ideal opportunity to further the cause of international information sharing. Some European officials have expressed the hope that IOSCO will play a greater role in international securities regulation under SEC's chairmanship of IOSCO's Technical Committee.

U.S. and Foreign Statutory Changes Also Have Advanced Information Sharing

SEC has also assumed a lead role in helping to improve information sharing by seeking domestic law changes and working with foreign officials to seek similar changes in their laws.[6] SEC officials worked directly with their foreign counterparts and through international organizations to promote these statutory changes. As a result, the evidence-gathering and information-sharing authorities of many U.S. and foreign regulatory officials have become broader and more similar worldwide. This, in turn, has resulted in improved information sharing.

Country-By-Country Initiatives Facilitate Information Sharing

In recent years, both U.S. and foreign regulators have obtained additional statutory powers that enable them to gather and share information more fully with foreign counterparts. For example, in 1988, SEC obtained the legal authority to conduct investigations using its subpoena authority—on behalf of a foreign counterpart—to gather information from persons and institutions in the United States who may have information relevant to

[6]CFTC asked for enhanced international enforcement authority in January 1989 as part of its reauthorization process.

suspected violations of the foreign country's securities laws.[7] In determining whether to conduct such investigations, SEC must consider whether the foreign authority has agreed to provide reciprocal assistance to SEC and whether compliance with the request will prejudice U.S. public interest. Also, in November 1990, SEC obtained a legal exception to certain provisions of the U.S. Freedom of Information Act (FOIA), allowing it to protect information received from a foreign counterpart from being released.[8] Under the terms of its exception, SEC cannot be compelled under FOIA to disclose records obtained from a foreign authority if the public disclosure of such records would be contrary to the law applicable to the foreign authority.[9]

Similarly, following changes to SEC's legislative authority, securities and futures regulatory authorities abroad have received additional statutory powers, which enable them to more fully gather and share information. For example, the securities and futures regulatory authorities of Japan, France, the United Kingdom, and the Canadian province of British Columbia recently obtained the explicit authority to conduct investigations using their compulsory powers at the request of foreign counterparts. The Dutch Central Bank received information-sharing powers in 1990.[10] Legislation proposed in 1991 would grant the Securities Board of the Netherlands the legal authority to share information already in its possession with foreign regulators. It would also grant the Board the authority to conduct investigations on behalf of a foreign regulator for instances in which the Netherlands has entered into an information-sharing agreement. France's public regulators also obtained the authority to communicate information to officials of foreign states, subject to reciprocity and guarantees of secrecy. These additional powers effectively enable COB to overcome the French blocking statute in order to exchange information with foreign regulators. In Luxembourg, the Commissariat aux Bourses has obtained legislative authority to share information with foreign regulators who have the ability to protect the information's confidentiality and who accord the Commissariat reciprocal rights to request information.

[7]This authority was conferred by the Insider Trading and Securities Fraud Enforcement Act (P.L. 100-704).

[8]FOIA (5 U.S.C. 552) requires federal agencies to make available to the public any agency document that is not specifically exempted from disclosure under the act.

[9]SEC can still be compelled to disclose records by Congress and the courts.

[10]In the Netherlands, securities and futures markets are regulated by the Dutch Central Bank and the Securities Board of the Netherlands.

Pacific Rim securities and futures regulators have improved their ability to share information with foreign regulators through legislative changes. For example, in 1990, the Japanese Ministry of Finance received legislative authority to compel the production of information on behalf of foreign regulators. The Ministry can now obtain and share confidential information with foreign regulators even in cases where there is no evidence that Japanese law has been broken or would have been broken had the same conduct occurred in Japan. According to a Ministry official, Japan adopted this legislation in response to IOSCO's recommendations for changes in regulatory authority. Similar legislation, the Mutual Assistance in Business Regulation Act, was introduced in Australia in early 1992. Under this act, the Australian Securities Commission will, with ministerial approval, be able to compel the giving of evidence, the provision of information, and the production of documents to assist foreign business regulators. This act will enable the Australian Securities Commission to negotiate MOUs with foreign regulators and will assist in defining the parameters of those agreements.

In Hong Kong, the Securities and Futures Commission was granted the authority to share information with foreign regulators in 1991. Before this development, the Commission was prevented from providing confidential information to foreign regulators because such sharing was not specifically designated as one of its functions. In addition, the Stock Exchange of Hong Kong recently changed its rules to allow confidential information sharing under certain conditions. The exchange will provide confidential information about a member, without the member's consent, if the recipient (1) exercises similar functions as the exchange, (2) has similar secrecy provisions, and (3) will not disclose the information to a third party.

European Community Initiatives Promote Information Sharing

The European Community (EC) is promoting both regulatory harmonization and information sharing among its 12 member countries.[11] To achieve its goal of economic integration, the EC has issued various directives that member countries must incorporate into their respective domestic laws. For example, a 1989 EC directive on insider trading requires member countries that did not prohibit insider trading to pass laws making it illegal; member countries that already had insider trading laws are required to amend these laws so that they are consistent with the minimum standards set forth by the directive. The directive also requires

[11]The 12 EC member countries are Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

that member countries (1) share information with one another regarding insider investigations; (2) protect the confidentiality of shared information; and (3) designate competent administrative organizations invested with necessary supervisory and investigatory powers to carry out the provisions of the directive, including the power to obtain information on behalf of another member country. The directive leaves the imposition of sanctions to member countries. The directive further allows the EC to establish information-sharing arrangements with nonmember countries.

The insider trading directive can help reduce impediments and improve information-sharing prospects in several ways. For instance, as stated, it contains provisions explicitly requiring information sharing.[12] Also, by requiring the adoption of insider trading laws in member countries that require acts to be criminal in both countries, the directive may make it easier for U.S. and foreign regulators to obtain information from these member countries for insider trading investigations.

The insider trading directive also requires each member country to designate a competent authority to implement the directive's provisions. This requirement has promoted, in part, the establishment of a new national regulatory authority in Luxembourg responsible for supervising securities and futures markets.[13] The creation of this regulatory authority provides U.S. and foreign regulators with a regulatory counterpart with whom to share information. It also may provide U.S. regulators with an appropriate foreign counterpart with whom to negotiate formal information-sharing agreements. For example, officials of Luxembourg's Commissariat aux Bourses, a national securities regulator established in January 1991, indicated that they may negotiate an information-sharing MOU with SEC in the future.

The EC and the European Free Trade Association, a trading bloc consisting of seven European countries,[14] have recently signed an agreement to integrate the economies of their respective members as a single entity, known as the European Economic Area. In the agreement, signed on May 2, 1992, the former European Free Trade Association countries are required to adopt the body of EC legislation, including securities-related

[12]According to an EC official, all 10 EC securities-related directives require information sharing between competent authorities. These directives also provide for the confidential treatment of shared information.

[13]Luxembourg did not have a futures market as of February 1992.

[14]The European Free Trade Association consists of Austria, Finland, Iceland, Norway, Sweden, and Switzerland. Liechtenstein is an associate member of this organization.

directives such as the one on insider trading. Thus, the effect of the directives in promoting more homogeneous securities regulations would be extended to these countries.

In September 1991, the Commission of the European Communities and SEC signed a joint statement on establishing improved cooperation. In this statement, the Commission of the European Communities and SEC agreed to work together to facilitate the exchange of information and the provision of mutual assistance between SEC and the relevant national authorities of the EC.

Impediments to Information Sharing Still Exist

Despite progress in their efforts to improve information sharing, U.S. and foreign securities and futures regulators still cannot obtain all the information necessary to fulfill their enforcement, compliance, and surveillance objectives. Legal and regulatory impediments to information sharing, including the blocking and banking secrecy laws of some countries, and differing legal and regulatory arrangements, continue to frustrate the attempts of U.S. and foreign regulators to exchange information to ensure market integrity.

Unsatisfied Information Needs Can Adversely Affect Regulatory Oversight

SEC and CFTC officials told us they are generally satisfied with the working relationships and information-sharing arrangements they have established. Similarly, many officials of the foreign regulatory organizations we contacted generally expressed satisfaction with the current arrangements and responsiveness of SEC and CFTC to their requests for assistance. Nevertheless, the inability of U.S. and foreign regulators to obtain all the information they need can adversely affect their ability to carry out their legislative mandate to protect investors and ensure efficient, fair, and orderly markets. For example, if federal regulators cannot obtain customer identity, bank account, or other information from a foreign country for an insider trading investigation, they may not be able to determine whether they should bring a case despite strong suspicions based on other evidence.

In one ongoing insider trading case involving suspicious trading just before a foreign firm took over a U.S. firm, U.S. regulators spent considerable time and resources trying to learn the identities of brokerage account holders in the British West Indies, Luxembourg, and Switzerland. However, in part because of foreign bank secrecy laws and an ongoing criminal investigation abroad, U.S. regulators told us that they have only obtained some of the information they needed even though they have made over 15 different requests to foreign authorities. The regulators have not yet been able to obtain enough evidence to determine whether U.S. laws were violated.

Impediments to Information Sharing Still Exist

Differences in the laws and regulatory structures of different countries as well as other factors still impede efforts to improve international information sharing. The major information-sharing impediments we identified include

- blocking and privacy laws,

- bank secrecy laws,
- lack of regulatory authority to obtain information requested,
- lack of a national regulator,
- differing technical and resource capabilities,
- ongoing criminal proceedings,
- an inability to ensure the confidentiality of shared information, and
- dual-criminality requirements.

Blocking and Confidentiality Laws Have Not Been Overcome in All Countries

Information-sharing agreements can, in some cases, help overcome blocking and confidentiality laws. The laws of some countries, such as France, allow regulators to share information as long as they can assure that the information will remain confidential once provided to foreign counterparts. An information-sharing agreement can help provide these assurances. However, the United States does not have information-sharing agreements with all countries, and in some countries, even if such an agreement exists, laws may not permit sharing certain confidential information.

Among the countries we visited, Australia, Japan, Hong Kong, the Netherlands, and Singapore[1] have blocking or confidentiality laws that could restrict the information these countries may share with U.S. or other regulators.[2] In most cases, regulators in these countries are working to overcome blocking or confidentiality laws. Regulators in Australia, Japan, and Singapore said these laws have not posed a barrier to sharing information with foreign regulators. For example, Australian blocking laws have been overcome for the purposes of sharing regulatory information with CFTC. As part of the Sydney Futures Exchange's discussions with CFTC to obtain approval of its linkage with the Commodity Exchange, Inc., and also with respect to the application for exemption for the Exchange's members under Regulation 30 of the U.S. Commodity Exchange Act, the Australian Attorney General provided written assurances that Australian blocking legislation will not be used to impede the sharing of regulatory information. Also, regulators in the Netherlands told us that the Dutch Privacy Act partially limited their ability to provide certain types of information to foreign regulators, unless

[1]Singapore officials told us that although there is no uniform blocking or confidentiality law covering financial markets as a whole, their Futures Trading Act authorizes the release of confidential information only with the approval of the Monetary Authority of Singapore. In the past, the Authority has provided information on securities and futures markets to requesting authorities.

[2]Of these countries, SEC has information-sharing agreements with Japan and the Netherlands.

individuals consent or waive their rights.[3] However, regulators in the Netherlands also said new legal developments should rectify this problem. Confidentiality laws have also inhibited the ability of U.S. regulators to obtain information located in Hong Kong.

In addition, an exemption from the blocking laws of a country may not apply to all regulatory and exchange officials. For example, in France, where public regulators have a statutory exemption to the French blocking law, French securities and futures exchanges do not have an exemption. As a result, a French exchange cannot directly share risk-management information, such as the financial exposures of common members, with a foreign exchange. Consequently, the scope of MOUs among the French Societe des Bourses Francaises—the executive body for French stock exchanges—and various U.S. securities exchanges is limited to exchanging information on stock prices and aggregate trading volumes. On the other hand, risk-management information can be indirectly shared by exchanges through COB and SEC in accordance with the provisions of their information-sharing agreement. French and U.S. regulatory officials said, however, that because sharing trading and risk-management information in such an indirect manner is less efficient, it is not a satisfactory method in cases when such information needs to be shared quickly between exchanges to preclude abusive practices.

Bank Secrecy Laws Inhibit Information Sharing in Some Countries

Nearly every country we visited, including the United States, recognizes an individual's right to financial privacy. This recognition may take the form of bank secrecy laws, which restrict financial institutions from disclosing financial information in a customer account, or it may take the form of a right implied in a customer contract with a financial institution, which may be enforced in the courts. Securities and futures regulators in some of the countries we visited, such as France and the United Kingdom, have the legal authority to overcome the bank secrecy provisions of their home country in order to share information with foreign regulators. However, regulators in other countries may not be able to provide bank account records, trading records, and the identities of customers to foreign regulators.

[3]Dutch officials told us that this problem should have been solved by the time this report is issued.

Bank secrecy laws may be more problematic in countries where there is universal banking.[4] Unlike banks in the United States, banks in universal banking countries play a major role in brokering securities and futures transactions on behalf of their customers. Thus, if SEC or CFTC request information on bank-initiated transactions in such a country, a bank secrecy law could prevent that country's regulatory authority from providing the information.[5] In such cases, a U.S. regulator's only recourse may be to request that the counterpart regulator or the foreign bank ask the customers involved to waive their protections voluntarily and agree to release needed information.

For example, in Germany, a universal banking country, a contractual obligation prohibits bank officials from providing the names of bank customers to a foreign authority without the consent of the customers. Although this obligation can be overcome by German judicial authorities in domestic criminal investigations, German banking regulators and exchange officials cannot share such information with U.S. regulators. In a recent insider trading case, SEC sought information from several German banks concerning the identity of customers whose accounts were used to execute suspicious trades in U.S. securities. Although these banks agreed to voluntarily cooperate with SEC and did provide information on certain transactions, they were not able to furnish all the requested information, including the names of the customers behind the transactions.

Similarly, Hong Kong's bank secrecy provision prevents regulatory officials from providing customer account information to foreign

[4]In universal banking countries, banks can engage in every type of banking and financial activity, either directly or through subsidiaries. In some of these countries, the majority of securities activities are done within banks. In countries without universal banking, such as the United States, bank activities, such as participating in equity securities markets, are restricted.

[5]Among the countries we visited, Australia, France, Germany, Hong Kong, Luxembourg, the Netherlands, Singapore, Switzerland, Taiwan, and the United Kingdom are universal banking countries. The United Kingdom requires separate affiliates for securities and banking activities. Each of these countries, except for Australia and the Netherlands, also has a bank secrecy law.

Although Australia is a universal banking country, securities and futures activities are conducted by bank subsidiaries and are thus separate from traditional bank deposit activities. In Australia, there is no statutory enactment that provides for bank secrecy. Australia relies on common law authority regarding banker/client confidentiality. There are increasing numbers of exceptions to common law confidentiality provisions that allow disclosure. If SEC or CFTC request information on bank-initiated transactions in Australia, the Mutual Assistance in Business Regulation Act may enable the Australian Securities Commission, in some cases, to compel a bank to give evidence or give information to respond to the request.

Dutch officials told us that banks must honor the confidentiality rights of clients based on normal contractual obligations. On the basis of Dutch securities laws, both Dutch supervisory authorities—the Securities Board of the Netherlands and the Dutch Central Bank—can temporarily suspend the privacy of bank clients and obtain information from banks.

regulators. This provision recently prevented Hong Kong authorities from providing SEC with information on the identity of a bank account co-owner. SEC needed this information for an investigation of possible insider trading involving transactions made from this account.

Some Regulators Lack Authority to Obtain Requested Information

National regulators in several countries we visited lack the authority to obtain some or all of the information that may be requested by U.S. or foreign regulators. National regulators in Australia,[6] Hong Kong, Luxembourg, the Netherlands,[7] Singapore,[8] and the Republic of China lack the legal authority to perform investigations or to compel information on behalf of a foreign regulator.

In the United States, CFTC also lacks the authority to compel information not already in its possession solely at the request of a foreign counterpart and without regard to whether the request involves a violation of U.S. law.[9] CFTC officials said that making this authority available to CFTC might induce foreign authorities who also do not have the power to investigate violations of U.S. laws, where such actions do not violate their own laws, to seek such authority. The authority would also help avoid the complex and time-consuming jurisdictional and procedural issues that almost inevitably arise when investigations cross national boundaries. The availability of such assistance could serve as a deterrent to those who would attempt to effect wrongdoing in U.S. futures markets from a foreign jurisdiction that had agreed to provide assistance to CFTC. According to CFTC, persons subject to such an investigation would be entitled to all the rights currently afforded to persons who are subject to an investigation under the Commodity Exchange Act.

[6]Australian regulators expect passage of the Mutual Assistance in Business Regulation Act in 1992. This act allows the Australian Securities Commission, with ministerial consent, to obtain information on behalf of a foreign regulator. The act was assented to by the Governor General on May 12, 1992, and is now part of the Australian legislative framework. However, the date on which the act actually commences operational effectiveness is still unclear.

[7]The Dutch Finance Ministry and the two supervisory authorities on securities matters, the Dutch Central Bank and the Securities Board of the Netherlands, can only compel information on behalf of foreign regulators if a legally binding information-sharing agreement is in place with another country. The Securities Board of the Netherlands will have received full information-sharing powers by the time this report is issued.

[8]Officials of the Monetary Authority of Singapore told us that although they have no specific legislation authorizing them to perform investigations on behalf of a foreign regulator, the Attorney General could authorize them to provide such assistance.

[9]According to CFTC officials, if the subject of a foreign request also raises the possibility that U.S. futures laws have been violated, then CFTC may initiate an investigation to prove or disprove this suspicion. Information gathered during CFTC's investigation may then be shared with the foreign requester.

In one case, this lack of authority prevented CFTC from responding to several requests from Japanese authorities who were seeking information on the trading activities of certain U.S. firms. In addition, CFTC officials told us that, on a number of occasions, German authorities have asked them to gather evidence, including taking the testimony of futures market professionals. However, CFTC officials said they have not been able to respond to these requests because there was not a possible violation of U.S. law.

Lack of a National Regulator Can Hinder Information Sharing With Some Countries

Two countries we visited—Germany and Switzerland—do not have a national securities and futures regulator, although both jurisdictions are considering establishing a national regulator.[10] In these countries, U.S. regulators do not have a similar counterpart organization with whom they can coordinate and exchange information. As a result, U.S. regulators obtain or try to obtain information from alternative organizations in these countries such as police authorities or local government officials. For example, in connection with an insider trading case, SEC obtained from German police officials information such as names and addresses associated with certain phone numbers. In another recent stock fraud case, SEC requested information from Swiss federal police authorities who in turn referred the matter to cantonal officials, as provided for under the treaty between the United States and Switzerland.[11]

SEC officials told us that although the regulatory and legal traditions of Germany and Switzerland are similar, SEC has been able to develop a satisfactory way to obtain information from Switzerland. However, they said they have not been as successful in encouraging German government officials to develop a mechanism to share securities market information. The United States has signed a mutual legal assistance treaty with Switzerland that permits information sharing. The Swiss have designated the Federal Office of Police Matters to act as the central authority for mutual assistance. This office reviews SEC requests and refers them to cantonal authorities. The United States does not have a similar mutual assistance treaty with Germany. Although U.S. regulators often seek information on German securities and futures markets, no centralized

[10]Canada also does not have a national regulator, but provincial regulators supervise Canada's securities and futures markets. Switzerland has no federal securities market legislation and hence no central securities regulator, but banks that dominate the securities market are subject to the supervision of the Federal Banking Commission. German exchanges are broadly regulated by the Ministry of Economics.

[11]Switzerland is divided into 26 states called "cantons."

method for handling information requests, similar to that developed in Switzerland, has been created.

Some alternative organizations may not, however, be reliable or adequate sources of information for U.S. regulators in the long run. For example, CFTC officials told us that a police authority in one Pacific Rim country is willing to share information on a case-by-case basis but is reluctant to enter into a formal information-sharing arrangement with CFTC. The cooperation SEC receives from police officials in this country is not always as successful as cooperation with the Swiss. SEC officials said that some foreign police organizations are reluctant to assist SEC information requests either because they are not familiar with violations of securities law or SEC's quasijudicial powers or because they may not have the legal authority to assist or share information with a noncriminal agency such as SEC.

The absence of national securities and futures regulators in Germany and Switzerland has also precluded U.S. regulators from negotiating comprehensive MOUs or agreements with these countries. According to government authorities in the two countries, national regulators empowered to supervise markets and share information with foreign counterparts must first be established in their home country before comprehensive MOUs or agreements will be negotiated with U.S. regulators.

German officials said the EC's insider trading directive may lead to the establishment of a German national regulator for securities and futures markets. In January 1992, the German Federal Minister of Finance presented a plan for an amendment to Germany's capital market legislation. In submitting this plan, the Federal Ministry of Finance said that one important requirement for its implementation must be the creation of an efficient central supervisory authority and laws that prohibit insider trading. The proposed supervisory authority will be responsible for sharing information with corresponding authorities within the EC as well as for sharing information on a worldwide scale consistent with the principle of reciprocity and bank secrecy considerations. Swiss officials said their government is currently considering draft legislation that would establish a national regulatory authority to oversee Swiss securities and futures exchanges.

Differing Technical and Resource Capabilities Can Hinder Information Sharing

The differing technical and resource capabilities of regulators can also hinder, or at least delay, information sharing. A lack of familiarity with and knowledge of a country's securities and futures laws, regulations, investigation procedures, SRO rules, current trading strategies, or other unique features of a country's securities and futures markets can hinder cross-border information sharing. For this and other reasons, every year SEC invites foreign regulators to its training program on enforcement and investigation issues in U.S. securities markets. More than 50 foreign representatives attended in 1991.

In addition, U.S. exchange officials told us that foreign exchanges often lack the technical capabilities to collect data similar to that gathered and analyzed by U.S. exchanges. SEC has set up an emerging markets committee to advise foreign exchanges on expanding their technical capabilities.

Moreover, differences in resource levels of regulators affect their ability to obtain information in a timely manner. Regulators with limited staffing may not be able to answer all foreign requests for information because of competing domestic and other foreign requested investigatory work. For example, some Canadian regulators told us that it is sometimes a problem for them to respond to the large volume of information requests that come from U.S. regulators because the Canadian regulators have relatively small staffs. However, they said U.S. regulators' efforts to narrow and focus their information requests have helped alleviate this problem to some extent. In addition, CFTC's financial MOU with Canadian regulators delegates the routine sharing of information to SROs in the United States and Canada. This arrangement helped to relieve demands on provincial regulatory staff and to consummate the agreement.

Because SEC is concerned about overtasking the resources of some regulatory counterparts, at the request of a foreign regulatory authority, the staff of SEC is considering making a proposal to its commissioners on detailing SEC staff to work temporarily for foreign regulators. SEC staff would assist the regulators to answer SEC information requests where such requests create an undue burden on the limited resources of the counterpart.

Ongoing Criminal Proceedings Limit Information-Sharing Possibilities

U.S. regulators have encountered difficulties in obtaining information from other countries when that information was the subject of foreign criminal proceedings. For example, in two cases from France involving possible insider trading or stock fraud, SEC sought information related to activities that were the subject of criminal proceedings. In both cases, it was not possible for the French prosecutor to provide the information requested once the French proceedings began. SEC was unable to obtain the information from French judicial authorities because these authorities did not regard SEC as an appropriate judicial authority with which to share information. Similarly, in the United States, SEC and CFTC cannot obtain information from an ongoing grand jury proceeding that may be needed to answer a foreign information request.

Inability to Ensure Confidentiality Inhibits Information Flow

The inability of a regulator to protect the confidentiality of shared information may preclude that regulator from obtaining information from a counterpart. According to U.K. and Luxembourg officials, for instance, assurances must be provided that confidential information, once shared with another country's regulator, will be safeguarded in order for mutual assistance among regulators to work effectively.

In the United States, CFTC has limited ability to assure the confidentiality of information provided to it by foreign regulators.[12] Specifically, CFTC does not have as broad a legislative protection from disclosure under the provisions of FOIA as has been granted to SEC. Moreover, SEC is able to prevent disclosures of confidential information received from foreign authorities under third-party subpoenas.

The laws of some foreign jurisdictions preclude their authorities from entering into information-sharing agreements unless they can be assured that protections of confidentiality similar to those of their home country are available. For example, foreign authorities have expressed concern about the effect of FOIA on information they supply to U.S. regulators. Because CFTC lacks these protections, the French COB is unable to provide CFTC confidential information. CFTC's lack of authority to sufficiently protect the confidentiality of shared information has prevented the finalization of the enforcement information-sharing agreement with COB.

[12]At this time, CFTC can ensure the confidentiality of certain investigatory information in its possession. However, not all types of information can be protected, and once an investigation is closed, generally the information cannot be protected. See the Commodity Exchange Act (7 USC section 12(a)) and the Freedom of Information Act (5 USC section 552(b)(7)), which exempt from disclosure investigatory records compiled for law enforcement purposes.

Dual-Criminality Requirements Limit the Scope of Inquiries

Dual-criminality requirements, or requirements that an act be criminal in both countries, can hamper information sharing between two regulators by limiting the scope of inquiries to those matters that constitute criminal offenses in both countries. For example, regulators in Germany are unable to respond to some foreign information requests unless the suspected violation also constitutes a crime in their country. In Germany, where insider trading is not a crime, government officials say that they are limited in what assistance they can offer U.S. regulators investigating possible insider trading activities. A note to the Swiss Mutual Assistance Treaty allows U.S. securities regulators to use the treaty for investigations of potential insider trading violations as long as the investigation may lead to a criminal prosecution.

U.S. Regulators Lack Other Legal Authorities That Could Facilitate Information Sharing

In addition to CFTC's lack of legal authority to obtain information solely on behalf of foreign regulators and fully protect the confidentiality of shared information, CFTC lacks another information-sharing authority that has been granted to SEC. CFTC does not have the explicit legal authority to provide nonpublic information to foreign SROs who are administering or enforcing rules and regulations as they relate to futures markets. For example, according to officials of both CFTC and the United Kingdom's SIB, CFTC should have this authority to share information directly with U.K. SROs that are, with few exceptions, the front-line regulators of U.K. investment businesses. These officials said that information about SRO members or applicant members should be able to be passed to the SRO concerned because it is the SROs that are responsible for a firm and require the information. SIB officials told us that they encourage SROs to have good channels of communication with other regulators.

Bills pending before Congress to reauthorize CFTC include provisions for granting CFTC the authorities discussed earlier. CFTC first requested enhanced legislative authority in January 1989. According to CFTC officials, receipt of these legal authorities is integral to CFTC's ability to exercise proper supervisory controls over U.S. futures markets that are becoming increasingly international. In particular, CFTC officials said that their lack of authority to obtain information on behalf of foreign regulators and protect the confidentiality of shared information is preventing them from concluding or is substantially delaying formal information-sharing agreements with foreign counterparts. The finalization of CFTC's administrative agreement with COB has been delayed nearly 2 years pending CFTC's receipt of these authorities.

Some countries, such as Switzerland and France, have the authority to assist a foreign regulator investigating violations of securities or futures laws by freezing assets located in their countries on behalf of foreign regulators. When regulators are investigating potential foreign securities or futures violations, there is often a need to freeze assets in the foreign jurisdiction. For example, when SEC detects suspicious trading from a foreign account immediately before or after a significant event, such as a corporate takeover, SEC would like to prevent the traders from withdrawing the proceeds of the trade before it obtains sufficient evidence to determine whether there was a securities violation. U.S. regulators do not have the authority to freeze assets located in the United States at the request of a foreign authority.

Officials from the U.S. Department of Justice told us that it may be possible to freeze assets at the request of a foreign country if the United States has a mutual legal assistance treaty with that country. Such treaties generally cover the immobilization of assets. Even so, the treaties rely on U.S. law for implementation. Because available U.S. laws do not lend themselves to the objective of freezing assets on behalf of a foreign authority, a U.S. court may not be persuaded to impose a freeze. In the absence of a treaty, freezing assets is even more doubtful. As table I.4 in appendix I indicates, few countries have a mutual legal assistance treaty with the United States. U.S. Department of Justice officials also said that the inability to assist foreign authorities by freezing assets inhibits the responsiveness of foreign authorities to requests from the United States to freeze assets because there is no reciprocity. Because exploring this problem involves consideration of legal and administrative issues beyond the securities and futures scope we considered in our review, we did not pursue it further.

Conclusions and Recommendations

Conclusions

Although our work indicates that cross-border information sharing in securities and futures markets is increasing and improving, the process of information sharing is continually evolving, and regulators should remain open to new approaches. As legal and regulatory structures and requirements become more similar internationally, new information-sharing strategies may become possible. These strategies might include comprehensive multilateral agreements between several countries.

The emphasis of U.S. and foreign regulatory officials and international organizations on developing cooperative bilateral relationships has helped, but there are still impediments that frustrate information sharing. To the extent that these impediments involve issues, such as secrecy laws and blocking statutes in other countries, U.S. regulators will have to address them bilaterally and through international organizations, such as IOSCO and FIBV, to overcome them. As international efforts to harmonize the legal and regulatory structures of individual countries take effect, impediments to information sharing may become less formidable.

U.S. securities and futures regulators will need the flexibility to meet the changing demands of an international marketplace. The differences between the legislative authorities of the agencies regarding information sharing need to be corrected as soon as possible. CFTC's current lack of legislative authority similar to that of SEC inhibits CFTC's ability to share information. As securities and futures trading increases internationally, information sharing will continue to be an important tool for U.S. regulators to ensure that the U.S. securities and futures markets remain fair and honest.

Recommendations to Congress

We recommend that Congress provide CFTC the same legislative authority SEC already has to

- obtain information on behalf of foreign regulators in order to answer those regulators' requests without regard to whether the requests raise possible violations of U.S. laws,
- guarantee more fully the confidentiality of information provided to it by foreign regulators, and
- pass nonpublic information directly to foreign SROs.

Agency Comments and Our Evaluation

SEC and CFTC generally agree with this report. SEC says it has made a substantial commitment to fostering meaningful cooperative relationships with securities regulators around the world. SEC also says its counterparts have signed MOUs and obtained authorities that enhance their ability to share information internationally. (See app. III.) CFTC says it asked for enhanced international enforcement authority in January 1989 as part of its reauthorization process and that it is committed to working with Congress in completing the reauthorization bills so that this and other important regulatory issues can be resolved (see app. IV).

U.S. Government and Regulator Cross-Border Agreements

Table I.1: SEC, CFTC, and U.S. Government Agreements With Foreign Regulators and Governments

Country	U.S. organization	Foreign organization	Date	Description
Argentina	SEC	Comision Nacional de Valores	Dec. 1991	MOU on consultation, technical assistance, and mutual assistance for the exchange of information.
Australia	CFTC	Australian Securities Commission, Australian Attorney General's Office, and Sydney Futures Exchange	July and Aug. 1986	Information-sharing assurances for implementing the trading link between Sydney Futures Exchange and Commodity Exchange, Inc.
Australia	CFTC	Australian Securities Commission, Australian Attorney General's Office, and Sydney Futures Exchange	Aug. 1986 through June 1988	Unilateral assurances to cooperate in information sharing related to Regulation 30 rules. Firms located in Australia may solicit and accept orders from U.S. customers for foreign futures and options transactions if the firms agree to disclose trading and financial information to CFTC on an as-needed basis.
Brazil	SEC	Comissao de Valores Mobiliarios	July 1988	Comprehensive MOU to encourage the performance of securities market oversight functions; inspection or examination of investment businesses; and the conduct of investigations, litigation, or prosecution.
Brazil	CFTC	Comissao de Valores Mobiliarios	Apr. 1991	Comprehensive MOU covering mutual assistance and exchange of information in enforcement matters. The agreement includes access to confidential information and information gathering on behalf of each other, including obtaining documents and taking testimony or statements of witnesses.
Canada— provinces of Ontario, Quebec, and British Columbia	SEC	Ontario Securities Commission, Commission des Valeurs Mobilieres du Quebec, and British Columbia Securities Commission	Jan. 1988	Comprehensive MOU for sharing a wide range of information. Assistance will be provided to facilitate the performance of securities market oversight functions and the conduct of investigations, litigation, or prosecution.
Canada— provinces of Ontario and Quebec	CFTC	Canadian Government, Ontario Securities Commission, Commission des Valeurs Mobilieres du Quebec, Toronto Futures Exchange, and Montreal Exchange	June 1988 through Aug. 1990	Unilateral assurances from federal and provincial regulators and exchanges to cooperate in information sharing on Regulation 30 issues.

(continued)

Country	U.S. organization	Foreign organization	Date	Description
Canada— provinces of Ontario and Quebec	CFTC and the National Futures Association	Ontario Securities Commission, Commission des Valeurs Mobilieres du Quebec, Toronto Futures Exchange, and Montreal Exchange	Sept. 1991	This is a financial information-sharing MOU that provides financial information sharing on a request, routine, and ad hoc basis with respect to designated futures brokers—those exempted from registration with CFTC under Regulation 30 and key related firms. Key related firms are firms regulated by CFTC that are related to firms regulated by Ontario and Quebec regulators and vice versa.
Costa Rica	SEC	Comision Nacional de Valores	Oct. 1991	Communique declaring intent to develop a framework for sharing investigatory information and provide technical assistance for development of Costa Rican securities markets.
France	SEC	Commission des Operations de Bourse	Dec. 1989	Comprehensive administrative agreement for encouraging the performance of regulatory responsibilities, ensuring compliance, and sharing investigatory information.
France	SEC	Commission des Operations de Bourse	Dec. 1989	Understanding, that goes beyond the administrative agreement, to engage in mutual consultations to coordinate market oversight and resolve differences between the respective regulatory systems.
France	SEC	Commission des Operations de Bourse	Sept. 1990	An exchange of letters to assist each country concerning information sharing on underlying and derivative securities listed on U.S. or French securities exchanges. The letters acknowledge that exchanges may enter into surveillance-sharing agreements.
France	CFTC	Commission des Operations de Bourse	June 1990	Comprehensive administrative agreement for sharing investigatory information. The authorities agree to provide access to information in their files, take the testimony of persons, and require the production of documents. This agreement will not be implemented until CFTC receives additional statutory authority.
France	CFTC	Commission des Operations de Bourse	June 1990	A mutual recognition MOU permitting all products in one jurisdiction to be traded in the other and for financial intermediaries to be exempt from duplicative registration requirements. That is, U.S. firms can do business directly with French customers and vice versa. Conditions specified in the MOU are intended to ensure adequate customer protection. The MOU provides for information sharing on a routine and as-needed basis in connection with monitoring and compliance matters including cross-border screen-based trading systems.

(continued)

Country	U.S. organization	Foreign organization	Date	Description
Hungary	SEC	Republic of Hungary State Securities Supervision and Budapest Stock Exchange	June 1990	Understanding on mutual intentions to promote the development of sound securities regulatory mechanisms and the integration of the Hungarian securities system into a broader international framework. SEC will consult with and provide assistance to the State Securities Supervision and the Budapest Stock Exchange and provide technical assistance for the development of the Hungarian securities markets.
Indonesia	SEC	Indonesian Capital Market Supervisory Agency	Mar. 1992	Understanding expressing the mutual intention to promote the development of sound securities regulatory mechanisms and the integration of the Indonesian securities system into a broader international framework. SEC intends to consult with and provide advice to the Indonesian Capital Market Supervisory Agency to establish and implement an ongoing technical assistance program for the development, administration, and operation of Indonesian securities markets.
Italy	SEC	Commissione Nazionale per le Societa e la Borsa	Sept. 1989	Communique in which each party agrees to facilitate the exchange of information relating to the administration and enforcement of U.S and Italian securities laws. This communique is viewed as an interim arrangement until a comprehensive MOU can be established.
Japan	SEC	Ministry of Finance	May 1986	General MOU in which each party agrees to facilitate requests for surveillance and investigatory information relating to the enforcement of U.S. and Japanese securities laws on a case-by-case basis.
Luxembourg	SEC	Institut Monetaire Luxembourgeois	May 1990	MOU for the exchange of information relating to material adverse changes in accounts cleared through NASD's PORTAL link between the International Securities Clearing Corporations and Centrale de Livraison de Valores Mobilieras, S.A. PORTAL is a real time electronic market that brings together buyers and sellers of securities in the private placement market.
Mexico	SEC	Comision Nacional de Valores	Oct. 1990	Comprehensive MOU on consultation and technical and mutual assistance for the exchange of information.
The Netherlands	Government of the United States	Government of the Kingdom of the Netherlands	Dec. 1989	Comprehensive agreement for sharing information among SEC, the Netherlands Minister of Finance, Dutch Central Bank, and the Securities Board of the Netherlands. This agreement is binding under international law.

(continued)

Country	U.S. organization	Foreign organization	Date	Description
Norway	SEC	Norway Banking, Insurance, and Securities Commission	Sept. 1991	Comprehensive MOU for sharing a wide range of information concerning consultation and cooperation in the administration and enforcement of securities laws.
Singapore	CFTC	Monetary Authority of Singapore	Mar. 1984	Information-sharing assurances for implementing the mutual offset system between Singapore International Monetary Exchange and the Chicago Mercantile Exchange.[a]
Singapore	CFTC	Monetary Authority of Singapore, and Singapore International Monetary Exchange	Sept. 1987 through Feb. 1988	Exemption granted under CFTC Regulation 30 permitting firms located in Singapore to solicit and accept orders from U.S. customers for foreign futures and options transactions if firms agree to disclose trading and financial information to CFTC on an as-needed basis.
Sweden	SEC	Swedish Financial Supervisory Authority	Sept. 1991	Communique on the exchange of information and the establishment of a framework for cooperation.
Switzerland	Government of the United States	Government of Switzerland	Nov. 1987	Diplomatic note reaffirming each party's interest in providing mutual assistance in criminal matters and ancillary administrative proceedings. Both parties also agreed to use the U.S.-Swiss treaty as a first resort whenever possible.
United Kingdom	CFTC and U.S. futures SROs	Securities and Investments Board and SROs	Sept. 1988	Financial information-sharing MOU allowing U.S. futures commission merchants conducting business in the U.K. to be exempt from U.K. capital rules, except for U.K. client money regulations, if CFTC and U.S. SROs monitor them.
United Kingdom	SEC and U.S. securities SROs[b]	Securities and Investments Board, Bank of England, and SROs[c]	Aug. 1988	Financial regulation MOU that allows U.S. broker-dealers that conduct business in the United Kingdom to be exempt from U.K. capital rules if U.S. regulators share information on the capital position of those firms.
United Kingdom	CFTC and National Futures Association	Securities and Investments Board, Association of Futures Brokers and Dealers, Investment Management Regulatory Organization, and The Securities and Futures Authority	May 1989	Financial information-sharing MOU related to U.K. brokers who are exempted from U.S. capital requirements.
United Kingdom	CFTC	Securities and Investments Board	May 1989	Side letter to the Sept. 1988 financial MOU that provides for the sharing of monitoring information relevant to CFTC's Regulation 30 rules.

(continued)

Country	U.S. organization	Foreign organization	Date	Description
United Kingdom	SEC and CFTC	Department of Trade and Industry, and Securities and Investments Board	Sept. 1991	Comprehensive MOU for sharing a wide range of investigatory and compliance information. Assistance encompasses cases involving fraud in the sale of foreign futures and options contracts to U.S. customers, fraud in the sale of prohibited off-exchange futures and options contracts to U.S. customers, trade practice violations on U.S. markets, the making of fraudulent statements or material omissions, and violations of reporting obligations.

[a]The mutual offset system is an international clearing mechanism that permits clearing members of one exchange to establish or liquidate a position through the execution of a trade on the other exchange.

[b]U.S. SROs that have signed this agreement are the New York Stock Exchange (NYSE), the National Association of Securities Dealers (NASD), the Chicago Board Options Exchange (CBOE), and the American Stock Exchange (AMEX).

[c]U.K. SROs that have signed the agreement are the Securities and Futures Authority; the Financial Intermediaries, Managers, and Brokers Regulatory Association; and the Investment Management Regulatory Organization Limited. The Association of Futures Brokers and Dealers and the Securities Association merged in April 1991 to form the Securities and Futures Authority.

Table I.2: SEC Agreements With Regional and International Organizations

Regional or international organization	Date	Description
The International Organization of Securities Commissions (IOSCO)[a]	November 1986[b]	IOSCO resolution that all securities authorities provide assistance, on a reciprocal basis, for obtaining information.
Commission of the European Communities	September 1991	Joint statement declaring intent to work together to facilitate the exchange of information and the provision of mutual assistance between SEC and the relevant national authorities of the European Community.
Inter-American Development Bank and the United Nations Economic Commission for Latin America and the Caribbean	September 1991	Understanding declaring intent of parties to work together to promote the growth of sound capital markets and securities regulatory mechanisms throughout Latin America and the Caribbean.

[a]The members of IOSCO that signed this resolution include Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, France, Hong Kong, Italy, Mexico, New Zealand, Nigeria, Norway, Ontario, Panama, Peru, Quebec, Taiwan, Trinidad and Tobago, the United Kingdom, and Uruguay.

[b]SEC formally ratified the IOSCO resolution on March 18, 1987.

Table I.3: Surveillance Agreements Between U.S. SROs and Foreign SROs

Country	U.S. SRO	Foreign SRO	Date	Description
Belgium	CBOE	Brussels Stock Exchange	June 1991	MOU with respect to securities and derivative instruments traded on CBOE and the Brussels Stock Exchange.
Canada	AMEX, Boston, CBOE, Cincinnati, Midwest, NASD, NYSE, Pacific, and Philadelphia exchanges	Toronto Exchange, Montreal Exchange, and Alberta Stock Exchange	Jan. 1990	Agreement to share information among Intermarket Surveillance Group members.
France	AMEX	Societe des Bourses Francaises	Oct. 1990	General MOU for sharing market surveillance information where information to be shared may concern but is not limited to the CAC 40 Index.[a]
France	CBOE	Societe des Bourses Francaises	Oct. 1990	General MOU for sharing market surveillance information where information to be shared may concern but is not limited to the CAC 40 Index.
France	Midwest Stock Exchange	Societe des Bourses Francaises	Oct. 1990	General MOU for sharing market surveillance information where information to be shared may concern but is not limited to the CAC 40 Index.
France	NYSE	Societe des Bourses Francaises	Oct. 1990	General MOU for sharing market surveillance information where information to be shared may concern but is not limited to the CAC 40 Index.
France	Pacific Stock Exchange	Societe des Bourses Francaises	Oct. 1990	General MOU for sharing market surveillance information where information to be shared may concern but is not limited to the CAC 40 Index.
France	Philadelphia Stock Exchange	Societe des Bourses Francaises	Oct. 1990	General MOU for sharing market surveillance information where information to be shared may concern but is not limited to the CAC 40 Index.
Germany	NYSE	Frankfurter Wertpapierboerse	Sept. 1990	Agreement for sharing market surveillance information on stocks comprising DAX or warrants on DAX.[b]
Germany	Philadelphia Stock Exchange	Frankfurter Wertpapierboerse	Sept. 1990	Agreement for sharing market surveillance information on stocks comprising DAX or warrants on DAX.
Germany	CBOE	Frankfurter Wertpapierboerse	Nov. 1990	Agreement for sharing market surveillance information on stocks comprising DAX or warrants on DAX.
Germany	AMEX	Frankfurter Wertpapierboerse	Mar. 1990	Agreement for sharing market surveillance information on stocks comprising DAX or warrants on DAX.

(continued)

Country	U.S. SRO	Foreign SRO	Date	Description
Germany	Pacific Stock Exchange	Frankfurter Wertpapierboerse	June 1990	Agreement for sharing market surveillance information on stocks comprising DAX or warrants on DAX.
Japan	AMEX	Tokyo Stock Exchange	Nov. 1988	Agreement for sharing market surveillance information on the International Market Index. Revised in December 1989 to cover warrants on the Nikkei 225. Revised again in September 1990 to cover options contracts on the Japan Index.
Japan	CME	Tokyo Stock Exchange	May 1988	Agreement to assist in detecting and preventing possible manipulative activities involving futures and options contracts based on the Nikkei 225 and 500 Stock Average Index and the Morgan Stanley Capital International EAFE Index and stocks comprising these indexes.
Japan	Chicago Board of Trade	Tokyo Stock Exchange	May 1988	Agreement to share information regarding trading of futures and options contracts on TOPIX.[c]
Japan	CBOE	Tokyo Stock Exchange	Jan. 1989	Agreement for sharing market surveillance information on options based on TOPIX and the Morgan Stanley Capital International EAFE Index and stocks comprising these indexes.
Japan	Coffee, Sugar, and Cocoa Exchange	Tokyo Stock Exchange	Nov. 1988	Agreement for sharing market surveillance information on the International Market Index. Revised in September 1990 to cover options contracts on the Japan Index.
Malaysia	NYSE	Kuala Lumpur Stock Exchange	Sept. 1991	Agreement to share information on securities, indexes, and derivative products.
Malaysia	CBOE	Kuala Lumpur Stock Exchange	Sept. 1991	Agreement to share information on securities, indexes, and derivative products.
The Netherlands	AMEX	European Options Exchange	May 1987	MOU for sharing market surveillance information related to the Major Market Index.[d]
The Netherlands	AMEX	Amsterdam Stock Exchange	Jan. 1991	Agreement to share information on securities, indexes, or derivative products traded on either exchange.
The Netherlands	NYSE	Amsterdam Stock Exchange	July 1991	Agreement to share information on securities, indexes, or derivative products traded on either exchange.

(continued)

Country	U.S. SRO	Foreign SRO	Date	Description
The Netherlands	COMEX	Amsterdam Stock Exchange	Apr. 1992	Agreement to share information on securities, indexes, or derivative products traded on either exchange.
The Netherlands	CBOE	Amsterdam Stock Exchange	May 1992	Agreement to share information on securities, indexes, or derivative products traded on either exchange.
Singapore	CME	Singapore International Monetary Exchange	Aug. 1984	An agreement to provide for sharing of market surveillance information relating to the mutual offset system.
Singapore	NASD	Stock Exchange of Singapore	June 1987	Agreement to exchange information on current quotations and transaction reports for NASD and SESDAQ screen-based dealer market system.
Sweden	AMEX	Stockholms Fondbors	Feb. 1991	MOU to share market surveillance information regarding any securities or derivative products traded on either exchange.
Sweden	CBOE	Stockholms Fondbors	Feb. 1991	Agreement to share market surveillance information regarding any securities, indexes, or derivative products traded on either exchange.
Sweden	NYSE	Stockholms Fondbors	May 1991	Agreement to share market surveillance information on any securities, indexes, or derivative products currently traded on either exchange.
Switzerland	AMEX	Association of Swiss Stock Exchanges	Feb. 1991	Agreement to share market surveillance information relating to securities, including any options, derivative instruments, or underlying securities.
Switzerland	NYSE	Association of Swiss Stock Exchanges	Feb. 1991	Agreement to share market surveillance information relating to securities, including any options, derivative instruments, or underlying securities.
Switzerland	CBOE	Association of Swiss Stock Exchanges	June 1991	Agreement to share market surveillance information relating to securities, including any options, derivative instruments, or underlying securities.
United Kingdom	NASD	London Stock Exchange	Apr. 1986	Agreement for the exchange of quotation information on a select group of securities.
United Kingdom and Republic of Ireland	AMEX	London Stock Exchange	May 1991	Agreement to share information relating to the FT-SE 100, and the FT-SE Eurotrack 100 and 200.[e]
United Kingdom and Republic of Ireland	CBOE	London Stock Exchange	May 1991	Agreement to share information relating to the FT-SE 100, and the FT-SE Eurotrack 100 and 200.
United Kingdom and Republic of Ireland	NASD	London Stock Exchange	May 1991	Agreement to share information relating to the FT-SE 100, and the FT-SE Eurotrack 100 and 200.

(continued)

Country	U.S. SRO	Foreign SRO	Date	Description
United Kingdom and the Republic of Ireland	NYSE	London Stock Exchange	May 1991	Agreement to share information relating to the FT-SE 100, and the FT-SE Eurotrack 100 and 200.

Legend

AMEX = American Stock Exchange
CBOE = Chicago Board Options Exchange
CME = Chicago Mercantile Exchange
DAX = Deutsher Aktienindex (German Stock Index)
EAFE = Europe, Australia, and the Far East
NASD = National Association of Securities Dealers
NYSE = New York Stock Exchange
SESDAQ = Stock Exchange of Singapore Dealer Automated Quotation System
TOPIX = Tokyo Stock Price Index

[a]CAC 40 is a capitalization-weighted index composed of France's most liquid blue-chip stocks.

[b]DAX is comprised of 30 blue-chip German stocks. At this time, SEC has not allowed NYSE to trade warrants based on DAX because privacy laws in Germany would prohibit NYSE from obtaining information needed to enforce U.S. laws. Therefore, this and other DAX agreements have never been used.

[c]TOPIX is a composite of all common stocks listed in the first section of the Tokyo Stock Exchange.

[d]This is an index of 20 highly capitalized, blue-chip U.S. stocks.

[e]These are indexes of European securities. The FT-SE Eurotrack 100 Index is an index of continental European securities.

Table I.4: Bilateral Treaties for the Production of Evidence

Country	Effective date	Description
The Bahamas[a]	July 18, 1990	The treaty provides for a full range of mutual legal assistance in criminal, civil, and administrative investigations and prosecutions that involve conduct punishable as a crime (1) under the laws of both the U.S. and the Bahamas and (2) under the laws of the requesting state by 1 year's imprisonment or more, provided that it arises from certain enumerated activities including fraud and violations of the law relating to financial transactions.
Canada	January 24, 1990	The treaty provides for mutual legal assistance in all matters relating to the investigation, prosecution, and suppression of criminal offenses. It does not require dual criminality and specifically provides for assistance with regard to securities offenses under Canadian Provincial or U.S. law. U.S. assistance to be provided includes locating persons or objects, serving documents, taking testimony, providing documents and records, and executing requests for searches and seizure. There are virtually no limitations on the use of evidence obtained through its processes.
Italy	November 13, 1985	This treaty provides mutual assistance in criminal investigations and proceedings concerning a broad range of offenses. Persons not in custody in the requested state may be required by that state to appear there for testimony if the state certifies that the testimony is relevant and material.

(continued)

Country	Effective date	Description
The Netherlands	September 15, 1983	Assistance provided under the treaty includes locating persons, serving judicial documents, providing records, taking testimony, producing documents, and executing requests for search and seizure and service of subpoenas. Search and seizure requires dual criminality and is available when the potential offense is punishable in both countries by imprisonment for over 1 year or is specifically listed in the Annex to the Treaty. Evidence and information obtained may not be used for purposes other than those stated in the request.
Switzerland	January 1977	This treaty on mutual assistance in criminal matters was the first such treaty to which the United States was a party. It provides for broad assistance in criminal matters including assistance in locating witnesses, obtaining statements and testimony of witnesses, producing and authenticating business records, and serving judicial or administrative documents. The treaty was supplemented by six exchanges of letters interpreting certain language used in its provisions. SEC may use assistance provided under the treaty when it is investigating a potential insider trading violation for the purpose of determining whether to refer it to the Department of Justice for criminal prosecution. SEC may use evidence gathered during the investigation in civil proceedings relating to the same offense.
Turkey	January 1, 1981	This extradition and mutual assistance treaty applies to all offenses within the jurisdiction of judicial authorities of the requesting country. The assistance provided includes locating persons, serving judicial documents, taking testimony, producing documents, serving of process, and compelling the appearance of witnesses before a court of the requesting country. Use of materials is limited to the purposes of the investigations, criminal proceedings, and damage claims.
United Kingdom (Cayman Islands)	March 1990	A treaty with the United Kingdom concerning the Cayman Islands[b] providing for cooperation and mutual legal assistance in criminal investigations and prosecutions that involve offenses punishable by more than 1 year's imprisonment under either U.S. or Cayman Islands laws. The treaty authorizes cooperation with respect to specific crimes including insider trading and fraudulent securities practices. Mutual assistance to be provided includes the taking of testimony; providing documents, records, and articles of evidence; serving documents; locating persons; and immobilizing criminally obtained assets. An exchange of letters applied this treaty to Montserrat, St. Christopher-Nevis-Anguilla, the British Virgin Islands, and the Turks and Caicos Islands.

[a]A self-governing British colony.

[b]A British crown colony.

Organizations Visited or Contacted

Australia	Regulator Australian Securities Commission Exchange Australian Stock Exchange Sydney Futures Exchange Other Attorney General's Department
Canada	Regulator Ontario Securities Commission Exchange Toronto Stock Exchange
France	Regulator Commission des Operations de Bourse Conseil du Marche a Terme Exchange Societe des Bourses Francaises Other Ministere de l'Economie et des Finances
Germany	Regulator Ministry of Finance Deutsche Bundesbank Exchange Frankfurter Wertpapierboerse Deutsche Terminboerse Other Federation of German Stock Exchanges Deutsche Bank

Hong Kong	Regulator Securities and Futures Commission Exchange Stock Exchange of Hong Kong
Japan	Regulator Ministry of Finance Exchange Osaka Securities Exchange Tokyo International Financial Futures Exchange Tokyo Stock Exchange
Luxembourg	Regulator Commissariat aux Bourses Institut Monetaire Luxembourgeois Other Cabinet d'Instruction
The Netherlands	Regulator Minister of Finance Dutch Central Bank The Securities Board of the Netherlands Exchange Amsterdam Stock Exchange European Options Exchange Other Economische Controledienst
Republic of China (Taiwan)	Regulator Securities and Exchange Commission Exchange Taiwan Stock Exchange

Singapore

Regulator
Monetary Authority of Singapore

Exchange
Singapore International Monetary Exchange
Stock Exchange of Singapore

Switzerland

Regulator
Federal Banking Commission
Federal Finance Administration

Exchange
Swiss Options and Financial Futures Exchange

Other
Federal Department of Foreign Affairs
Federal Office for Police Matters
Swiss Bankers Association

United Kingdom

Regulator
Bank of England
Securities and Investment Board
Securities and Futures Authority

Exchange
London Stock Exchange
London International Financial Futures Exchange

Other
Serious Fraud Office

United States

Regulator
Commodity Futures Trading Commission
Securities and Exchange Commission

Exchange
American Stock Exchange
Chicago Board of Trade
Chicago Mercantile Exchange

Coffee, Sugar, and, Cocoa Exchange
Commodity Exchange Incorporated
Kansas City Board of Trade
Minneapolis Grain Exchange
National Association of Securities Dealers
New York Cotton Exchange
New York Futures Exchange
New York Stock Exchange
Pacific Stock Exchange
Philadelphia Board of Trade

Other
Department of Justice
Intermarket Surveillance Group

International Organizations

Commission of the European Communities
International Organization of Securities Commissions
Federation Internationale des Bourses de Valeurs

Comments From the Securities and Exchange Commission

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

THE CHAIRMAN

May 8, 1992

Mr. Craig A. Simmons
Director, Financial Institutions
and Markets Issues
U.S. General Accounting Office
Washington, D.C. 20548

Re: International Securities and Futures Markets: Cross-Border Information Sharing by Regulators is Improving but Obstacles Remain

Dear Mr. Simmons:

I am writing regarding the captioned GAO draft report which analyzes the current status of information sharing among securities regulators. The report details the growing need for cross-border cooperation among securities regulators and the importance of allocating sufficient resources to police the increasingly internationalized securities markets.

The U.S. securities markets are one of our greatest resources. The internationalization of those markets presents an opportunity for growth but also creates new problems of regulation and law enforcement. The Securities and Exchange Commission ("SEC") is resolved to be at the forefront in meeting these challenges to maintain open, fair and sound markets.

The draft report highlights the SEC's efforts in the area of cross-border information sharing, and accurately describes the progress that has been made in that area. The enormous benefits to be derived from the development of a framework for international cooperation are evidenced by the SEC's successes in the area. It is important to recognize, however, that regulators must have both the political will and the legal authority to cooperate. As the SEC's experience has shown, when these two elements are present, other factors that might impede international information sharing, such as blocking and secrecy laws, can be overcome. Conversely, the absence of either factor can frustrate meaningful cooperation.

The SEC has made a substantial commitment to fostering meaningful cooperative relationships with securities regulators around the world. As indicated by the report, and corroborated by the SEC's experience in this area, the formalization of such relationships through the negotiation of Memoranda of Understanding ("MOUs") has played an important role in facilitating the gathering of information for enforcement investigations. Of equal importance is the role that such

cooperative arrangements play in facilitating SEC initiatives to enhance access to the U.S. securities markets. In sum, the development of the SEC's international program during the last few years has created a systematic approach for enhancing the growth and internationalization of the U.S. domestic markets while also ensuring the continued integrity of those markets.

In the early 1980s, when SEC attempts to secure foreign-based information in several important insider trading cases were frustrated by the assertion of foreign secrecy laws, the SEC had no alternative but to seek the assistance of the U.S. courts to compel the production of the foreign-based information. Those cases focussed attention on the impact of international access to the U.S. markets and the need to develop reliable methods for ensuring effective enforcement of the U.S. securities laws, especially when the fraud emanates from abroad. In 1982, the Swiss government and banking authorities took a stand against securities fraud, signing an MOU that provided the SEC with unprecedented access to Swiss bank trading records and resolved a problem that had plagued the SEC in some of its largest insider trading cases.

Since the signing of the Swiss MOU, the SEC initiated a program to develop more comprehensive MOUs with other countries. In 1986, the SEC entered into MOUs with the United Kingdom Department of Trade and Industry and the Japanese Ministry of Finance. Those MOUs provided for assistance in a wide range of cases, although assistance was limited to that which could be provided through the "best efforts" of the regulators. That limitation was, in part, a consequence of the fact that neither the SEC nor its counterparts had the authority to utilize subpoena power to assist foreign authorities at the time the MOUs were negotiated. In many countries, including the U.S., subpoena power is necessary to obtain banking information. Therefore, the SEC's powers under the early MOUs were seriously limited. Thus, while the SEC and its counterparts had the political will to cooperate, they lacked the legal authority to provide critical assistance. This issue was resolved when the SEC sought and obtained the enactment of the Insider Trading and Securities Fraud Enforcement Act, which provided the SEC the ability to issue subpoenas to obtain information on behalf of its foreign counterparts.

During my tenure at the Commission, one of my highest priorities has been to initiate and formalize efforts to enhance the SEC's information sharing abilities. As Chairman, I have signed six of the Commission's nine MOUs (Agreement with the Kingdom of the Netherlands, Administrative Agreement with the Commission des Operations de Bourse of France, Memorandum of Understanding with the Comision Nacional de Valores de Mexico, Memorandum of Understanding with the Banking and Insurance

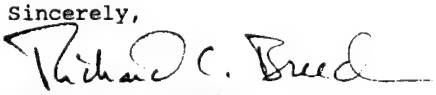
Commission of Norway, Memorandum of Understanding with the United Kingdom Department of Trade and Industry, and Memorandum of Understanding with the Comision Nacional de Valores of Argentina), as well as other more limited understandings that are intended to provide a basis for cooperation to the fullest extent possible.

The SEC's MOUs provide for comprehensive assistance on a bilateral basis, including the use of subpoena power to obtain documents and testimony located abroad. The SEC's approach in developing these MOUs has set a standard for cooperation that today is accepted world-wide. Indeed, our counterparts increasingly have followed the U.S. example, obtaining authority that enhances their ability to share information internationally, and signing MOUs.

I believe it is critical for the SEC to respond to the internationalization of the securities markets by making cooperation with other regulatory authorities an integral part of its regulatory and enforcement programs. Our focus is on the enhancement and protection of the U.S. securities markets. The success of the SEC's efforts, both bilaterally through the negotiation of MOUs, and multilaterally through its initiatives in the International Organization of Securities Commissions, demonstrates the power and potential of international cooperation. It also evidences the commitment of regulators world-wide to break down the remaining barriers to cooperation. While impediments still remain, we now have the tools to resolve more effectively our international information gathering problems.

If you have any questions regarding this letter, please feel free to contact me.

Sincerely,



Richard C. Breeden
Chairman

Comments From the Commodity Futures Trading Commission

COMMODITY FUTURES TRADING COMMISSION
2033 K Street, N.W., Washington, D.C. 20581
(202) 254-6970

Wendy L. Gramm
Chairman

April 29, 1992

Mr. Richard L. Fogel
Assistant Comptroller General
United States General Accounting Office
441 G Street, N.W.
Room 3858C
Washington, D.C. 20548

Dear Mr. Fogel:

We have reviewed the General Accounting Office's draft report entitled International Securities and Futures Markets: Cross-Border Information Sharing By Regulators Is Improving But Obstacles Remain. Staff members of the Commodity Futures Trading Commission have discussed with members of your staff some technical issues which I understand have been satisfactorily resolved.

The Commodity Futures Trading Commission concurs with the recommendation by GAO "that Congress provide the CFTC with legislative authority to (1) compel the production of information on behalf of a foreign regulator, (2) guarantee more fully the confidentiality of information provided to it by foreign regulatory authorities, and (3) pass nonpublic information directly to foreign self-regulatory organizations."

See pp. 6, 47, and 50.

We believe, however, that the report should emphasize that the Commission has been attempting to obtain exactly this legislative change for more than three years. The CFTC first asked for enhanced international enforcement authority in January of 1989. The CFTC reauthorization bill, H.R. 707, passed by the House of Representatives on March 7, 1991 would provide the CFTC the powers recommended in your report, essentially as they were proposed by the Commission in 1989. The Senate version of the bill contains similar authority, but does not guarantee the confidentiality of data furnished by foreign authorities. The fact that Congress has failed to resolve substantial differences in various parts of the reauthorization bills means these important powers have not yet been provided.

The Commission remains fully committed to work with the Congress in completing work on the reauthorization bills so this and other important regulatory issues can be resolved. We appreciate the opportunity to provide this comment and applaud the fine working relationship that has existed among GAO, SEC and

appreciate the opportunity to provide this comment and applaud the fine working relationship that has existed among GAO, SEC and CFTC staff in this important area.

Sincerely,

Wendy L. Gramm

Wendy L. Gramm
Chairman

Major Contributors to This Report

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Related GAO Products

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Securities Markets: Challenges to Harmonizing International Capital Standards Remain (GAO/GGD-92-41, Mar. 10, 1992).

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